P.W. Sl. No 73

1936-37-40-41-42 **File No.** 843/36

-44.

PUBLIC WORKS **DEPARTMENT.**

A CLASS.- E II **BRANCH**

**Subject:**— Workmen's Compensation

Krishna Bhoja, a cooly employed on work on the Bijapur Kagwad Roa in Belgaum Division.

Suits, Belgaum.

Institution of a — against Shri Laxm motor Service Company, Kolhapur and two others for recovery of Compensation paid by Government to a cooly under the Workmen's Compensation Act.

A [ ] 1945

158/E

E II

**File No.** 843/36

Std. Sectt. Slip 24-B

G. R., G. D., No. 2108, dated 22-6-23.]

Std. Sectt. 78 e.

# DOCKET SHEET

*Subject:—*

File No. 843/36

P.W. DEPT.

4E BRANCH.

*References:—*

A CT 'SS.

| Date. | To whom sent. | Notes and instructions. |
|---|---|---|
| 31-10-36 | EB | |
| 9.11.36 | GB. | |
| 9.11.36 | DS. | |
| 21.11.36 | Regy | Return U.O.R. to the P.W.D. |
| 28.11.36 | EB. | |
| 28.11.36 | AB. | |
| 11/5 | EB. | |
| 27/5 | DS. (thro' AB) | |
| 5/6 | EB. | |
| 18/6 | AB. | |
| 13/7 | EB. | |
| 15/7 | DS. | |
| 22/7 | EB. | |
| 4/8 | AB. | |
| 26/10/37 | EB | |
| 2/7 | EB | |
| 22.11.38 | EB | |
| 3/12/38 | EB | |

| Date. | To whom sent. | Notes and instructions. |
|---|---|---|
| 23/12/38 E<br>9/8<br>27/8/39 83 | | |
| 4/1/44 | D.S. | R. insure expeditious return. |
| | | Examined<br>18/11/66 |
| | | Record (class A) |

P.D No. 247/7-1-37

Office of the Commissioner
for Workmen's Compensation,
Secretariat, Fort,
Bombay, 8th October, 1936.

No.2947 of 1936.

From

A.H.Dracup, Esquire, B.A.(Cantab)
Commissioner for Workmen's Compensation,
Bombay.

To

The Executive Engineer,
Belgaum Division, Belgaum.

Subject:-Fatal accident to cooly Krishna Bhoja on 21st September,1936.

Sir,

With reference to your endorsement dated the 2nd instant forwarding a copy of the Accident Report re: accident to the cooly referred to above together with the endorsement from the Sub-Divisional Officer, Indi Sub-Division, I have the honour of stating that as the accident, as a result of which the cooly died, arose out of and in the course of his employment with the P.W.D. under the Workmen's Compensation Act x only the employers, i.e. Government will be liable and if no compensation is deposited as required by Section 8(1) of the Act the dependent of the deceased workman can proceed against Government. However, under Section 13 of the Act Government will be entitled to recover the amount of compensation from the person who was, according to them responsible for causing the injury to the deceased.

x EB copy put up on the case board.

I have the honour to be,
Sir,
Your most obedient servant,

Sd. A. H. Dracup

Commissioner for Workmen's
Compensation, Bombay.

---

No.G-1/B.M.

Public Works Department,
Belgaum, 29 October, 1936.

From

H.J.M.Cousens, Esquire,
Superintending Engineer,S.C.

To

The Secretary to Government,
Public Works Department, Bombay.

Subject:-Fatal accident on Bijapur Kagwad road in the Belgaum Division.

Sir,

I have the honour to state that on Bijapur Kagwad Road in the Belgaum Division, an accident took place on 21st September, 1936, in furlong 7 of mile 58 where the work of filling in ruts and hollows was in progress. A public motor lorry (bearing No.Kop 396) belonging to the Shri Laxmi Motor Service, Kolhapur, was proceeding at high speed from Shedbal to Athni and due to rash and negligent driving, it knocked down a cooly named Krishna Bhoja who was working there. The cooly was removed to Athni Dispensary for treatment but died the same night.

2. The Executive Engineer, Belgaum Division in reporting the matter to the District Magistrate, Belgaum, has requested that Officer to take strong action to put a stop to the rash and negligent driving of service lorries, as such cases have of late become very common, especially between Shedbal and Athni. In the present case, a panchanama was made by the Police and it is now reported by the District Superintendent of Police, Belgaum that the defaulting driver (Vithal Devalu Patil of Kolhapur) has been ordered to be prosecuted under Section 304-A and 279 of I.P.C. and also under Section 5 of M.V.Act and that his 'B' Permit has been suspended pending the result of the case which is awaited.

3. The ~~monthly~~ daily (p.s) wages of the deceased cooly prior to his death were Rs. ~~0-5-6~~ 0-5-6 (p.s) and on this basis the amount of compensation payable works out to Rs. 550/- according

to

to Schedule IV, Page 37 of the Workmen's Compensation Act, 1923. In his letter No.2947 of 8th October,1936, addressed to the Executive Engineer, Belgaum Division (copy enclosed) the Commissioner for Workmen's Compensation, Bombay, points out that the accident, as a result of which the cooly died, arose out of and in the course of his employment with the Public Works Department and therefore the employer i.e. Government will be liable to pay the compensation. Further, under Section 13 ibid Government will be entitled to recover the amount of compensation from the person responsible for causing the death of the deceased.

4. Under these circumstances, I would request the sanction of Government to the payment of compensation viz: Rs. 550/- to the dependent of the deceased cooly from the grant placed at my disposal for repairs to communications under 41-Civil Works - Provincial. Meanwhile, the Shri Laxmi Motor Service, Kolhapur, who are responsible for the death of the workman, will be asked, through the Agent to the Governor General for the Deccan States and Resident at Kolhapur to arrange for the payment of the amount viz: Rs. 550/-. If the Company denies this liability then the question of taking legal action will be considered.

I have the honour to be,

Sir,

Your most obedient servant,

Superintending Engineer,S.C.

Accompaniments:-
1 Copy of the letter referred to.

WORKS
No. 843/36
30 OCT 1936

rial No. 19067

EG
30x36

No. G-1/B.M.

Public Works Department.
C/V. Belgaum, 5-11- November, 1936.

From

H. J. M. Cousens, Esquire,
Superintending Engineer, S. C.

To

The Secretary to Government,
Public Works Department, Bombay.

Subject :- Fatal accident on Bijapur Kagwad Road in the Belgaum Division.

Sir,

I have the honour to refer to this office No.G-1/B.M. dated the 29th October, 1936 and to request that in the first two lines of paragraph 3 thereof, the following corrections may kindly be carried out :-

| | | |
|---|---|---|
| daily in place of | | 'monthly' |
| Rs.0-5-6 | " | 'Rs. 0-5-0 |

I have the honour to be,
Sir,
Your most obedient servant,

C/S.

Superintending Engineer, S. C.

843|36
No. 19619

843/36
~~19067/1961~~

E.B.

Submitted (together with serial no. 19062).

2. In the circumstances explained by the S.E., S.C., in his letter pp 364 written ~~under dis-posal~~ sanction to the payment of Rs. 550/ to the dependent of the deceased cooley from the ~~grant~~ current year's grant for "repairs to communications" placed at ~~his~~ the S.E.'s disposal under the head "41-Civil Works. Provl." may be accorded in u.o. consultation with the Commissioner for Workmen's Compensation and the F.D. and the S.E. may be asked to report in due course the action taken by him to recover the amount in ~~quest-~~ question from the Shri Laxmi Motor Service, ~~Kholapur~~ Kolhapur.

7.11.36
9

Through the A.B.

N.R.K.
7/11/36
113

10/11/36

10/11

On his part above the amount & compensation is correctly calculated

10/11

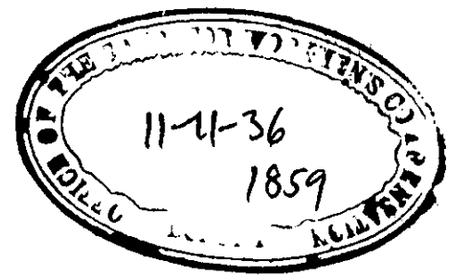
U.O.N. No. 3330 & 18-11-36 to F.D.

FINANCE DEPARTMENT
File No.
13 NOV 1936
Serial No.

843/36.

Issue n.o.
10/11

U.O. to Comm. for W.C. & F.D.
(in necessain) of 11th Nov. 1936




Finance Department.

Seen and returned to the P.W.D.

mm
21.11.36.

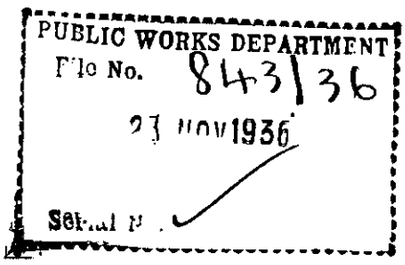
24/11.

Thro. G Br. Secret Memo
21/11

U.O.V. to the P. W.D. dated 21.11.36.

D.S.

Asst Sec
24/11




23-11-36

Translation of the Kanarese Panchnama dated 22nd September 1936 drawn up by the Sub-Inspector of Police of Kudchi, Taluka Athani.

------- : O : -------

" We Krishna Yeshwant Powar and Somalingapa Ningapa Pujari, both of Athani state as under :-

Under instructions of the Sub-Inspector of Police, Kudchi and the Police Patil of Kidgedi village to give our statements in the Panchnama for the accident occurred near furlong stone No. 57/6 of the Bijapur-Kagwad Road near Navnyal village, we accompanied them to the site and saw the place of accident shown by Sundrabai, the wife of the deceased Krishna Bhoja, cooly. The width of the road at the place of the accident is in all 22 Ft. of which 15 Ft is the metalled portion. The furlong stone bearing No. 57/6 is at a distance of 56½ Ft. to the Kagwad side from the place of accident. It is stated by Sundrabai, the wife of the deceased that she was sitting at a distance of 27 Ft. from the place of accident i.e. 16 Ft. away from the metalled portion of the road when the accident occurred. Some white glass pieces are lying at the place of accident i.e. on the left side of the road. One of these pieces was lying on the left side and the others were in the centre of the road. The taxi driver, Vithal Daulat, who was present at that time says that the seven glass pieces are of right mud-guard lamp of Motor Lorry No. Kop-396 broken at the time of accident. No marks of wheels, due to the stopping of the Lorry by brake are seen as there was rain and many lorries passed thereon. It appears from the fallen glass pieces of the broken right mud-guard lamp of the lorry on the left side of the road and especially in the centre that the lorry might have been on the left side of the road. Judging from the statement of Sundrabai the wife of the deceased, it may be concluded that her deceased husband was simply standing on the road side to the left of the lorry. The width of the road is 6½ Ft. on the right and 15½ Ft. on the left from the fallen place of the deceased. There do not appear any distinguishing marks at the place of accident. Sundrabai, the

wife

wife of the deceased who was present at the time of the Panchanama says that, before the accident occurred she was sitting with her female-child on the right side of the road and her deceased husband was working on the left side. While the lorry was passing, he came to me being afraid that the young child in her arms would go infront of the running lorry, thereby the iron sheet of the mud-guard on the right - side of the lorry struck my husband's back and buttocks. As a result he received some wounds here and there etc. There are barren fields on both the sides of the road where the -- accident occurred. The village Navnyal is at a distance of 6 furlongs from the place of accident. It is also observed from the oral statements of the driver Vithal who was present at the time of the Panchanama and Sundrabai that the lorry - No. Kop-396 met with an accident at furlong No. 57/6 while - running from Shedbal to Athani. The seven glass pieces mentioned above have been confiscated by the Police. We saw the lorry No. Kop-396 kept behind the place of accident. The said - lorry is of 1936 model of Chevrolet make. Its registration - number is 396 and the number of A permit is 252. The disc of the lorry is in good condition. The permit A is upto 31-3-1937. Number plate is also in order. Red disc, brake, stearing rod - and light etc., are in order. The driver Vithal Daulatta Patil says that while he was driving from Shedbal to Athani at about 1 P.M. on 21-9-36 and when the motor reached the place of accident the deceased Krishna came across the road to the right and the mud-guard of the lorry on the right side struck him. The - said mud-guard was seen and found to have bent at two places. The mud-guard side lamp was broken and the glass pieces are seen lying on the road. No other loss to the lorry except the above two is seen. There are no blood stains on the bumper of the - lorry. The approximate amount of loss caused to the lorry i.e. to the mud-guard and the mud-guard lamp would come to Rs 20/- to Rs 25/-.

----- : 0 : -----

B.V.B.

Letter No. G-1, dated the 6th November, 1936, from the Executive Engineer, Belgaum Division, to the Superintending Engineer, Southern Circle, Belgaum.

---

Subject :- Fatal accident in mile No. 58/7 of Bijapur Kagwad Road.

"With reference to your endorsement below letter No. pp384 G-1/B.M. dated 29th October, 1936, addressed to Government, I have the honour to submit herewith a copy of the Kanarese Panchanama together with its translation into English.

2. It will seem from the Panchanama, in which the statement of the wife of the deceased cooly has been recorded, that the latter met with his death while endeavouring to cross the road from left to right to save his child. Since the cause of accident viz. rash driving given in the report of the Sub-Divisional Officer, Indi Sub-Division, in a measure conflicts with that recorded in the Panchanama, it is for consideration as to whether the amount of compensation payable to the dependents of the deceased of the deceased may be deposited now or after the result of the prosecution is known. Should the statement recorded in the Panchanama be found to be true, the question arises as to whether the employer is liable to pay compensation as the act of the cooly in crossing the road when the motor lorry was in sight may be held to amount to wilful negligence, thus exonerating the driver.

3. In any case, it appears to be desirable to await the decision of the Court. I am, therefore, of opinion that action as required by para 2 of your endorsement under reference need not be taken now. I shall be glad to be informed as to whether you concur".

---

No. G-1/B.M. Public Works Department.
C/V. Belgaum, 19 November, 1936.

Copy with the translation of the Panchanama ( in Kanarese) forwarded, with compliments, to the Secretary to Government, Public Works Department, Bombay, with reference to this office No. pp384 G-1/B.M., dated the 29th October, 1936.

2. Under the circumstances, the question of depositing the amount of compensation will be deferred pending the

decision of the Court which will be communicated to Government as soon as it is known.

Accompts.
1 Translation of
Panchanama.

Superintending Engineer, S.C.

C/S.

...D WORKS DEPARTM...
...No. 843/36
19 NOV 1936
Serial No. 20353

E.B.

Submitted.

2. The main file is under U.O.R. to the Commr. for workmen's compensation and the S.D. Its return may be awaited.

21.11.36.

23/11/36.

E.B.

Resubmitted.

2. The main file has since been received and arranged with it. In view of para 2 of the S.E's endt. the orders, regarding payment of the compensation to be issued to dependents of the deceased cooley may not be sanctioned at this stage but a further communication from the S.E. may be awaited on the receipt of

Through the A.B.

28.11.36.

30/11/36

Await further communication from S.E.

30/11

(1212-36)

30/11

E B

30.

843/36
20353

E. B.

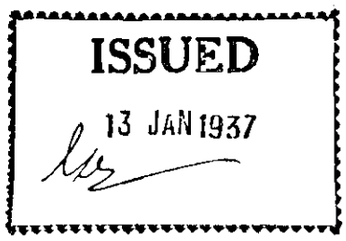
Submitted with reference to para 12 p 2 of the office note of 30-12-36.

2. An enquiry may be made of the L.R., S.C., as per printed form put up for signature.

Dues
11.1.37

Expedited under no. 843/36E
of 17. Jany. 1937

Dues
11.1.37




Dues
11.1.37

12-1-37

11/1/37.

For D.S

13/1

Amine (13-2-37)
13/1

No. G-1/B.M.

Public Works Department.

C/V. Belgaum. 24 January. 1937.

From

H. J. M. Cousens. Esquire.

Superintending Engineer. S. C.

To

The Secretary to Government.

Public Works Department. Bombay.

Subject :- Fatal accident in mile No. 58/7 of Bijapur Kagwad Road.

***

Sir.

With reference to Government Expeditor No. 843/36-E, dated the 13th January, 1937. I have the honour to state that the case is still pending in the Court and a further communication will be made as soon as the Court's decision is known.

I have the honour to be,

Sir,

Your most obedient servant,

Superintending Engineer, S. C.

C/S.

WORKS DEPARTMENT
No. 843/36
25 JAN 1937
Serial No. 1692

E.B. 267.

Await:

29/1/37.

27-1-37

28-1-37

Hp 11-12 & 1—

Expedite the S.S.C.

14/4/37.

14-4-37

15-4-37

(S.S.C.).

Expedite answer. 843/36 2

2nd April 1937

14.4.37

RECEIVED
20 APR 1937

for D.S.

Issue
Thanks.
19/4

21-5-37

E.B.

25-1-37

Duplicate.

Ex. No. 12

In the Court of the Subordinate Judge and Magistrate of the First Class, Athni.

Criminal case No. 102/1936.

Imperator

V/s

Vithal Daulat Patil of Kolhapur, Accused.

Offence:- Sections 304A. I.P.C. & 5 I.M.V.Act.

JUDGMENT.

The accused motor driver has been charged under section 304A.I.P.C. & section 5, of the Indian Motor Vehicles Act with causing the death of a road coolie named Krishna Bhoja Kute by driving his bus rashly and negligently on 21-9-36 at about noon.

The facts as alleged by the prosecution are that the accused was driving his bus No. Kop.396 from Shedbal towards Athni and when it came near the furlong stone 57/6 he knocked down the road coolie Krishna who suffered several injuries and died a few hours afterwards in the Athni dispensary as a result of the injuries. It is alleged that the bus was being driven rashly and negligently and considering that the road at the spot was under repairs and that there were persons on the road including a child, the speed was so fast [illegible] must be said to be driving rashly and negligently and that the death of Krishna was due to his rashness & negligence.

On these facts the questions that arise for determination are :-

(1) whether it is proved that the accident and death of Krishna took place as alleged?

(2) whether the death was caused by the accused's rash & negligent act while driving his bus on the public road?

My findings are in the affirmative on both the points

From

From the evidence led in this case it appears that the road at the scene of offence was under repairs and the deceased was charged with doing the repair work. The rough sketch map made and produced as Ex. 10 by Police Sub-Inspector shows clearly that just at the left extreme of the road where the deceased was struck by the car the road was being repaired. The Sub-Inspector states that the deceased was working on an area of about 4 ft x 2 ft. The deceased in his dying declaration also states that he was repairing the road at the scene of accident. There is thus no doubt that the road was under repairs at the spot.

As regards the accident the evidence of the witnesses shows that the deceased was struck on the right side by the right mud-guard of the bus and was thrown off and fell on the road.

Now as regards the force of the impact it is clear that that will depend upon the speed of the car. The distance over which he was thrown off will also give us an index to the force. On this point, however, there is no unanimity among the witnesses. Ex. 2. Vasanji puts it down at one or two cubits whereas the map prepared by the Sub-Inspector according to what was pointed out by the deceased's wife, it is about 12 Ft. The car seems to have come to/stop in about the same horizontal line as the man. In this light the figure put by witness E[redacted]d be easily explained. He probably means that the man was a cubit away from the car when it stopped.

There is yet another index that the impact was very forceful. The Panchanama shows and the Police constable Ex.3 states that the right front mud-guard of the car was pressed down about 6 inches and that the lamp glass was broken and the lamp itself embedded in the mud-guard. That clearly shows, I think, that the bus must have given the deceased a very forceful impact.

The doctor Ex.7 clearly states that the death was caused by rupture of the liver due to injuries 2 & 3 of the postmortem report Ex. 7 A.

I

I have therefore, no hesitation in coming to the conclusion that death was caused by the accident.

The next question is whether it was due to the rash & negligent driving of the accused.

I have already found earlier that the impact of the bus on the deceased was of a very great force. It, therefore, follows prima facie that the speed must have been fast. However we have some evidence of the speed and I shall deal with it before coming to final conclusion on that point.

Witness Vasanji Ex.2 puts it at 25 miles an hour and says it was the usual speed of buses and says that it was uniform for a distance of 2 miles. Ex.11 Bhulabhai says that it was about 20-25 miles at the time of accident but says that it was more by about 5 miles a furlong back. He says that the accused lowered it on seeing the man & child. It, therefore, appears from the evidence of these four witnesses that the speed must not have been less than 25 m.p.h.

We have the fact that the impact was very severe. Whether the bus going at this speed would cause that force is very difficult to say. But in any event the evidence leaves no doubt in my mind that the speed must have been fast.

There is still one more point to be considered and that the question whether the accused had blown his horn so as to give the deceased or any person on the road sufficient warning of the approach of the car. Ex.5 Giryapa says that the accused was blowing his horn continuously, whereas the wife of the deceased Ex.4 says she heard it about a mile of[f]. The witness who should have given us more exact informati[on] on this point viz: Bhulabhai Ex.11 who was in the seat n[ext] to the driver's cannot say whether it was blown at all [or] since he says the bus slowed down at a distance of a fu[r]long from the spot, I am prepared to agree with the statement [of] the accused that he blue it at a distance of one furlong [from] the deceased.

It appears from the evidence before me that the deceased

deceased saw the cart approaching and his child standing on the other edge of the road and ran across to catch hold of the child. In doing so he seems to have been struck by the car. I do not believe that he suddenly jumped into the road. Even if he did it was probably because he had not sufficient warning of the approach of the car.

Summing up my conclusions on the evidence it may be stated that the car was going at a fast speed, it was on the left side of the road, that the accused blew his horn at a distance of about a furlong from the deceased and that the deceased was knocked down when he was crossing the road to catch his child.

In order to determine whether in these circumstances the driving was rash and negligent we must take into consideration also the fact that any contributing negligence of the deceased cannot absolve the accused of his guilt if he was -- himself careless. It is quite obvious that oblivious of his responsibilities the accused was driving the bus at a fast speed on a road which was under repairs. Though he sounded his horn when he was a furlong off I do not think that seeing that there was a child on the road whom he could see he was absolved from his duty of giving a warning by doing that. He should have sounded his horn at a nearer distance also.

The accused in his statement says that he swerved to the left and did his best to avoid the accident but as the deceased suddenly jumped in front of the car he could not avoid it. His pleader in support of this points out that the accused has not complained in his dying declaration that the accused was negligent. I do not think that there is any substance in the point . The dying man may not be in such a restful state of mind as to make it a point to state about the negligence or otherwise of the accused. Besides the evidence before us, as I have pointed out before sufficient to prove his rashness and negligence and to show that the accident was due to his rashness and want of care.

I, therefore, hold that the accused was driving his

bus in such a way that he had no control to stop it immediately and failed in his duty to warn pedestrians of his approach.

I find him guilty and convict him under S.304 A. Indian Penal Code & S.5 Indian Motor Vehicles Act.

As regards the sentence considering that the conduct of the deceased himself was partly responsible for the accident, I think a sentence of fine only will meet the ends of justice.

I sentence the accused to pay a fine of Rs seventy-five on the 1st count and rupees twentyfive on the 2nd count. In default of payment of the fine the accused is sentenced to 3 weeks' rigorous imprisonment on the first count and one week's rigorous imprisonment on the 2nd count.

In case the fine is recovered, Rs 50/- be paid to the widow of the deceased as compensation.

Property before Court being of no value to be destroyed.

Sd./- V.N. Palekar.
Sub-Judge & M.F.C.

22 - 3- 1937.

True copy.

Sd/-

A.S.K.

Letter No. G-1, dated the 6th May, 1937, from the Executive Engineer, Belgaum Division, to the Superintending Engineer, S. C.

---

Subject :- Fatal accident in mile No. 58/7 of Bijapur-Kagwad Road.

"In continuation of this office letter No. G-1, dated the 24th April, 1937, I have the honour to submit herewith a copy of the judgment (in duplicate) dated 22nd March 1937 given by the Sub-Judge and Magistrate F. C., Athni in the case referred to above. It will be seen therefrom that the Sub-Judge and Magistrate has held the accused, motor driver Vithal Daulat Patil, guilty under section 304-A of the Indian Penal Code and section 5 of the Indian Motor Vehicles Act and has sentenced the accused to a fine of Rs. 75/- or in default to a rigorous imprisonment of 3 weeks. In the event of the fine being recovered, Rs. 50/- are ordered to be paid to the widow of the deceased workman Krishna Bhoja who has also been held to be partially responsible for the accident. In view of the judgment, it is for consideration whether the employer viz. Government is still liable to pay compensation as assessed by the Commissioner for Workmen's compensation, Bombay, to the dependents of the deceased."

---

No. G-1/B.M.

Public Works Department.
C/V. Belgaum, 9th May, 1937.

Copy with copy of the judgment forwarded, with compliments, to the Secretary to Government, Public Works Department, Bombay, with reference to para 2 of this office No. G-1/B.M., dated the 19th November, 1936.

2. Orders on the point raised by the Executive Engineer in the concluding portion of his letter may kindly be issued.

Superintending Engineer, S. C.

C/S.

PUBLIC WORKS DEPARTMENT
File No. 843/36
10 MAY 1937
Serial No. 9743

E.B.
10-5-37

843/36/9743

P.W.Deptt.

E.B.

Submitted. with ref. to this office note f. 12 dated the 30-11-36.

2. It was decided ff. 7-8 within, in u.o. consultation with the Commr. for Workmen's Compensation and the F.D., to sanction the payment of Rs 550 to the dependents of the deceased cooly. In view, however, of the S.E., S.C's ff. 11-12 endt. dated the 19-11-36, orders to that effect were f. 12 not issued, but the decision of the Court in the matter f. 12 was awaited. That decision f. 21 has now been recd. In view thereof, the Ex.Engr., Belgaum Dn., has raised f. 23 the point whether the employer, viz. Govt., is still liable to pay compensation as assessed f. 1 by the Commr. for Workmen's Compensation to the dependents of the deceased cooly. These papers may, therefore, be refd. u.o. to the Commr. for favour of his remarks on the point f. 23, in the first instance.

PRV 27-5-37. (Thro. A.B.)

B.K.R.
26-5-37.
159

27/5

Government are also liable to pay. Contributory negligence on the part of a workman does not affect his right to compensation.

3/6

Govt. of P.W.D. No. 1819 dt. 2-6-37

D.S.

26/5

U.O. to the Commr. for Workmen's Compensation &

29-5-37 979

43/36. 26

PUBLIC WORKS DEPARTMENT
File No. 843/36
- 3 JUN 1937
Serial No. 1125

E.B.
3-6-37

843/36

No. 843/36. E.

P.W.D.,B.C., 21st June 1937.

Memo.

Subject:- Workmen's Compensation: Krishna Bhoja, a cooly employed on work on the Bijapur Kagwad Road in ~~Bijapur~~ Belgaum Dn.

---

With reference to his endt. No. G-1/B.M., dated the 9-5-37, on the subject noted above, the S.E., S.C., is informed, with compliments, that it is considered that Govt. are still liable to pay compensation as assessed by the Commr. for Workmen's Compensation to the dependents of the deceased cooly. Before the requisite sanction is accorded to the payment thereof, the S.E. is requested to point out a fresh source to meet the extra cost involved in the grant of the compensation.

By order of the G. of B.

(Thro: A. B.)

D.A.-Nil.

B.K.R.
18-6-37.
138

PRV. 18-6-37.

19/6/37

ISSUED
23. JUN 1937

No.G-1/B.M.

Public Works Department,
Belgaum, 12 July, 1937.

From

H. J. M. Cousens, Esquire,
Superintending Engineer,
Southern Circle.

To

The Secretary to Government,
Public Works Department, Bombay.

Subject:- Workmen's Compensation:
Krishna Bhoja, a cooly employed on work on the Bijapur Kagwad Road.

Sir,

p. 27

With reference to Government Memorandum No.843/36-E, dated the 21st June, 1937, I have the honour to state that the extra cost of Rs 550/- involved in the grant of the compensation to the dependents of the deceased cooly can be met from the grant of Rs 4,25,000/- for repairs to Communications under '50.Civil Works-Provincial' sanctioned for the first six months of the current year. Presumably, however, the compensation payable would be that amount less the Rs 50/- ordered to be paid by the Court as compensation out of the fine levied on the accused motor driver.

A

p. 4

2. In this connection I would invite reference to para 4 of this Office No.G-1/B.M. dated 29th October, 1936 and to enquire whether the Shri Laxmi Motor Service, Kolhapur, whose driver was responsible for the accident, may be asked, through the Resident for Kolhapur and Deccan States, Kolhapur, to arrange for payment to Government of the amount of the compensation. This action, which was then proposed to be taken was deferred pending the decision of the Court, vide paras 2 and 3 of the Executive Engineer, Belgaum Division's p. 11 letter No. G-1, dated 6th November, 1936- copy submitted to Government under this Office pp. 11-12 No.G-1/B.M. dated 19th idem.

B

I have the honour to be,
Sir,
Your most obedient servant

Superintending Engineer,
Southern Circle.

PUBLIC WORKS DEPARTMENT
File No. 843/36
12JUL1937
Serial No. 13589

Copy of memo. No. 2391 dt 23-7-1937 from the Commissioner for Workmen's Compensation.

× × × ×

A. Cannot be done. The Act was made as way of compensation under the Workmen Compensation Act

(B) Sec. 13 allows compensation paid by an employer under certain circumstances to be recovered from a third party.

21/7

× p. 19 of the Act

memo. No 2391 dt 21st July (93) to the R.W.D.

PUBLIC WORKS DEPARTMENT
File No. 843/36
21JUL1937
Serial No. 14087

21-7-37

843/36
13589

P. W. Deptt.

E. B.

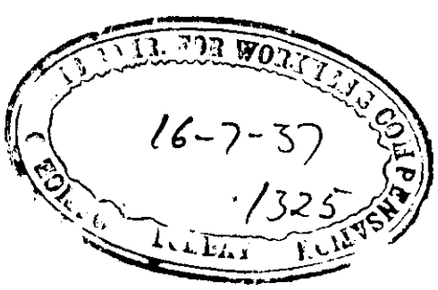
Submitted with refce. to G. M. No. 843/36-E, dated the 21-6-37, and the notes underlying it. (p. 27, p. 25)

2. Before the requisite sanction is accorded to the payment of the compensation to the dependents of the deceased coolie, these papers may again be referred n.o. to the Commr. for Workmen's Compensation for favour of his remarks on the points raised at 'A' and 'B' of the S. E., S. C's. letter under disposal. (p. 29)

P.R.V. 15-7-37.

Thro: A. B.

S/B 15/7/37




D.S. ✓

For remarks of the Comm.r for Workmen's Comp. see p. 50 ante.

U. O. to Comm. for W. Comp. 26 July 1937

843/36
13589

P. W. D.

E.B.

Submitted with ref. to this Deptt. p.31 u.o.r. dated the 16-7-1937.

2. Please see the p.30 note, dated the 21-7-1937, from the Commr. for Workmen's Compensation. The F.D. having already p.8 agreed to the proposal re: the payment of Rs.550 to the dependents of the deceas-ed coolie, the necessary draft is put up pp.34-35 for submission. It may issue, if approv-ed.

× Sag 5-8-37 PRV 4-8-37. 5 ×

Thro: A.B.

843/36
13589

No.843/36-E.
P.W.D.,B.C., 11th Aug. 1937.

Subject: Workmen's Compensation: Krishna Bhoja, a coolie employed on work on the Bijapur Kagwad Road in Belgaum Dn.

Memo.

With ref. to the correce. ending with his letter No.G-1/B.M., dated the 11-7-37, on the subject noted above, the S.E.,S.C., is informed, with compliments, that a compensation of Rs.550, admissible under the Workmen's Compensation Act, is sanctioned to the dependents of the deceased coolie Krishna Bhoja who whilst employed on a work on the Bijapur Kagwad Road in the Belgaum Dn., was knocked down by a public motor lorry belonging to the Shri Laxmi Motor Service, Kolhapur, and died as a result of the injuries caused by the accident. The amount should be deposited with the Commr. for Workmen's Compensation Bombay, for payment. The extra cost involved in the grant of the compensation should be met from the source pointed by the S.E. in para.1 of his letter under reply.

2. The presumption contained in the concluding portion of para.1 of the S.E.'s letter under reply is not correct. The Rs.50/- ordered to be paid by the Court as compensation out of the fine levied on the accused motor driver was not paid by way of compensation under the Workmen's Compensation Act.

3. As regards para.2 of his letter under reply, the S.E. is informed that the

× ½. 19 of the Act.
for Govt.

ISSUED
13. AUG. 1937

Orders issued after consultation with the Finance Department
Notes remain with this Department and can be seen when required.

D.A.- Nil.

the provisions of Sec.13 of the Workmen's Compensation Act ½-30 allow compensation paid by an employer under such circumstances to be recovered from a third party. The Shri Laxmi Motor Service, Kolhapur, whose driver was responsible for the fatal accident should be asked, thro: the Resident for Kolhapur and Deccan States, to arrange for payment to Govt. of the amount of the compensation, viz. Rs.550, and the result thereof reported to Govt. in due course.

PRV. 4-8-37. 5

By order of the Govr. of Bombay,

½-29 Copy, with a copy of the S.E.'s letter under reply, to -

the F.D.,
the A.G., Bombay,
the Commr. for Workmen's Compensation Bombay,
the Ex.Engr., Belgaum Dn.,

for information.

PRV. 4-8-37. 5

G.J.P.
4-8-37

6 FPKm

D.S.

7/8/37

Secy.

Submitted.

N. M. P.W.D. 7/8/37

7/8.

843/36.

Admiralty (1-10-37 ~~15-9-37~~)
14/8

Air Min. 1/43
" 1/10

E.B.

Expedite the S.S., S.C.

P.R.O.
16-10-37.

16/10/37.

For D.S.

16/10

⊗ Expedited under No. 843/36-E/1, dated 18th Octr. 1937.

ISSUED
18. OCT. 1937

Admiralty (18-11-37)
19/10

Letter No.G-1, dated 18th October, 1937, from the Executive Engineer, Belgaum Division, to the Superintending Engineer, Southern Circle, Belgaum.

---

Subject:-Workmen's compensation:
Krishna Bhoja, a coolie employed on work on the Bijapur Kagwad Road in Belgaum Division.

"With reference to your Memo No.G-1, dated 7th August 1937 and subsequent expeditor dated 14th October, 1937, I have the honour to report that a sum of Rs.550/- has already been deposited with the Commissioner for Workmen's Compensation, Bombay for payment to the dependents of the deceased coolie Krishna Bhoja by debit to the C.R. grant of the Bijapur-Kagwad Road for the first six months of 1937-38.

2. As regards recovery of Rs. 550/- from the Shree Laxmi Motor Service, Kolhapur, the Resident for Kolhapur and the Deccan States, Kolhapur has been requested to ask the Shree Laxmi Motor Service to pay into the Kolhapur Residency Treasury the amount of Rs. 550/- but no reply has been received from him yet. On receipt of his reply further information in the matter will be communicated".

---

Below letter No.G-1, dated 18th October, 1937, from the Executive Engineer, Belgaum Division.

---

No.G-1/B.M.

Public Works Department,
Belgaum, 22 October, 1937.

Copy forwarded, with compliments, to the Secretary to Government, Public Works Department, Bombay, with reference to Government Memorandum No.843-36-E, dated 11th August, 1937 and subsequent expeditor dated 18th October, 1937. The Executive Engineer has been instructed to expedite the Resident for Kolhapur and the Deccan States for the recovery of the amount of Rs. 550/- from the motor service referred to above and his reply will be communicated to Government on receipt.

Superintending Engineer,
Southern Circle.

PUBLIC W[illegible] PARTMENT
File [illegible] 843/36
25 OCT 1937
Serial [illegible] 28885

E.B.

Await.

P.R.V.
27-10-37.

28/10/37

For D.S.

(1-12-37)

28/11

(E.S.)

Expedite ✕ the S.S. S.C; with reference to G.M. No. 843/36-E, B 34 dtd 11-8-1937.

BQ
14-2-38

11/2/38.

✕ ~~No. 843/36-E-2 dated 7th Feby 1938.~~ Not issued as Supply issued here.

16/2

A.S.

11/2/38

E/A. 21/2

Copy of letter No.Dy.No.J-214/38 of the 29th January 1938 from the Secretary to the Resident for Kolhapur and the Deccan States, to the Executive Enginee Belgaum Division.

---

Subject:- Workmen's Compensation:
Krishna Bhoja, a coolie employed o work on the Bijapur Kagwad road in Belgaum Division.

" With reference to your endorsement No. G-1/2 (G 1/3) dated the 20th August 1937, on the above subject I am directed to state that the Kolhapur Darbar say that the amount of compensation could not be recovered, as th Shri Laxmi Motor Service, Kolhapur, owner of the motor c No.Kop-396, state that though the car nominally belongs tothem, it has been purchased by Mr.H.B.Shinde, on the hire purchase system and the latter should be held respon sible for the damages. Mr.Shinde, however, states that as the case arising from the accident has been decided i his favour, he is under no legal liability to pay any damages."

No. G-1
Office of the Executive Engineer,B.
Via Bijapur, 7th February 19

Copy forwarded, with compliments to the Superintending Engineer, S.C. Belgaum for information in continuation of Executive Engineer, Belgaum Division's letter No. G-1 dated 22-1-1938. Orders regarding the steps that should be taken towards the recovery of the amount of Rs.550/- from the Shri Laxmi Motor Service, Kolhapur are solicited and may kindly be expedited.

Sd:- N.G.K.Murti,

Executive Engineer,
Bijapur Division.

Below endorsement No.G-1, dated 7th February, 1938, from the Executive Engineer, Bijapur Division.

---

No.G-1/Bj. Public Works Department,
Belgaum, 11th February, 1938.

Copies forwarded with compliments to the Secretary to Government, Public Works Department, Bombay, with reference to para 3 of G.M.No.843-36-E, dated the 11th August 1937, for favour of issuing further orders in the matter. P.34

2. This has also reference to this office No.G-1/Bm, dated 22nd October 1937. P.39

Superintending Engineer,
Southern Circle.

BLIC WORKS DEPARTMENT
le No. 843/36
14 FEB 1938
Serial No. 4022

14-2-38

843/36

E.B.

pp.34-3

Submitted with reference to para.3 of Govt.Memo.No.843/36-E, dated 11-8-37.

2. It will be seen from the Secy.to the Resident's letter p.41 that the Shri Laxmi Motor Service state that though the car nominally belongs to them it has been purchased by one Mr.H.B.Shinde on the hire purchase system and that the latter shoul be held responsible for the damages. Mr. Shinde, however, p.41 states that as the case arising from the accident has been decided in his favour, he is under no legal liability to pay any damages. It is presumed that Mr.Shinde is referring to the judgment pp.17-21 given by the Magistrate in the case and if so his contention is not understood. In that judgment the Magistrate held that the death of the coolie was due to the motor driver's rash and negligent driving and he was found guilty and convicted under Section 304-A of the Indian Penal Code and Section 5 of th Indian Motor Vehicles Act. The Magistrate, however, held that as the conduct of the deceased himself was partly responsible for the accident, a sentence of fine would meet the ends of justice. It is not clear how the judgment pp.17-21 absolves Mr.Shinde from any legal liability to pay damages. The papers may be referred U.O.to the R.L.A. for favour of advice as to whether the amount can be recovered by recourse to a civil suit and if so against whom the xxx suit...

843/36

suit should be filed - whether the Shri Laxmi Motor Service or Mr.Shinde.

If any further information is required by the R.L.A.before giving his opinion, it will be obtained from the S.E.

13-5-36.

16/5/36.

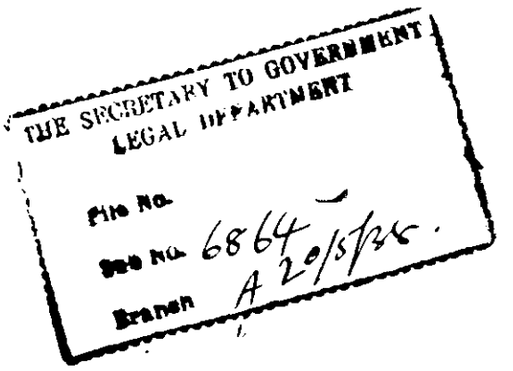
18/5

A.S.

Secy.

U.O. to R.L.A. 8/18 May 1938.

Issued 19/5



No. G-1/Bj.

Public Works Department.
C/V. Belgaum, 23 May, 1938.

From

G. D. Daftary, Esquire,

Superintending Engineer, S. C.

To

The Secretary to Government,

Public Works Department, Bombay.

Subject :- Workmen's Compensation:
Krishna Bhoja, a cooly employed on work on the Bijapur Kagwad Road in the Bijapur Division.

Sir,

I have the honour to invite reference to this office endorsement No. G-1/Bj, dated the 11th February, 1938, and to request the favour of early orders in the matter.

× R. file
No. 843/36
Secretary
R.D.A on 19-5-38.

I have the honour to be,

Sir,

Your most obedient servant,

G D Daftary

Superintending Engineer, S.C.

(E.B.)

Await return of the main file which has been referred u.o. to the R.L.A. on the 19-5-38.

26-5-38

26/5/38

Await (20-6-38)

A.J.

PUBLIC WORKS DEPARTMENT
File No. 843/36
24 MAY 1938
Serial No. 11978

EB 25/5

U4(1)-7

EB 26-5-38

The first question for consideration is whether under section 13 of the Workmen's Compensation Act, 1923, Government would be entitled to be indemnified for the amount of Rs. 550 paid by them as compensation to the heirs of the deceased coolie. Section 13 of the Workmen's Compensation Act, 1923, provides that where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid would be entitled to be indemnified by the person so liable to pay damages. The Magistrate before whom the driver of the bus was tried held that the death of the ~~driver~~ coolie was due to the rash and negligent driving on the part of the driver. It is true that in passing the sentence the Magistrate has remarked that the conduct of the ~~driver~~ coolie was partly responsible for the accident but such conduct was not held as amounting to contributory negligence absolving the driver from all blame in the matter. In these circumstances it would appear that Government can claim to be indemnified under section 13 of the Workmen's Compensation Act. A civil suit would, however, be necessary for the purpose.

2. As regards the second question, it is clear that the driver of the bus would himself be liable. So also the person to whom the bus belonged and whose servant or agent drove the bus would be liable for the rash and negligent act committed by the latter during the course of his employment or agency. It is, however, stated that the bus belonged to the Shri Laxmi Motor Service Company and was taken up on a hire purchase agreement by one Shinde. It is not necessary for Government

to determine what were the conditions of the agreement between the Laxmi Motor Service Company and Mr. Shinde and whether the ownership had actually passed to Mr. Shinde. It would be desirable to make both of them to be parties to the suit and to leave to the Court to decide whether both or either of them would be liable.

3. If it is decided to file a suit a report under (Copy at Nb 53-54 part)
Law Officers' Rules 99 to 103 should be sent to this office at an early date.

J.R. Bhandarkar

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. S-5-06 , dated the 18th July June 1938.

D.L.B.

Act ref Inst v h.

PUBLIC WORKS DEPARTMENT
File No. 843|36
- JUNE 1939
Serial No. 14954

603
1-7-38

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## C.- RULES FOR THE INSTITUTION AND DEFENCE OF SUITS, APPEALS AND OTHER CIVIL PROCEEDINGS IN THE MOFUSSIL.

### I.- INSTITUTION OF SUITS ON BEHALF OF GOVERNMENT.

Report to be submitted before a suit is instituted.

99. Any officer wishing to institute a suit shall submit a clear and detailed report, through the ordinary channel of communication, to the head of his department, showing:-

(a) the circumstances which render the suit necessary.

(b) the exact nature of the claim for which it is to be brought;

(c) the steps, if any, which have been already taken to obtain satisfaction of the claim;

(d) what objection or excuse, if any, the defendant has urged against the claim;

(e) the evidence, both oral and documentary, which it is proposed to adduce in support of the claim; and

(f) the evidence which, so far as is known, the defendant will be able to adduce in his defence.

All documents relied upon and all the correspondence and written proceedings whether in English or in the vernacular, connected with the subject matter of the proposed suit, should accompany the report. Translations of important vernacular papers should also be furnished, and if files of papers are being sent with the report, distinguishing marks should be used so as to indicate the papers to which attention is to be directed.

Solvency of defendent to be inquired into.

100. It should be stated in the report whether or not the circumstances of the person against whom it is proposed to institute the suit are such as to render it likely that execution will be obtained of any decree that may be given against him.

The probability of the recovery of a sum at least equal to the costs should be ascertained before recommending the institution of any suit, unless, for reasons which should be explained, it is considered that the suit should be brought, notwithstanding that the recovery of costs is doubtful.

Report to be referred by head of department to the Legal Remembrance

101. The head of the department, if he thinks that all the necessary preliminary steps have been taken and that there is prima facie sufficient cause for the institution of a suit on behalf of Government, shall refer the report with his opinion to the Legal Remembrancer.

Legal Remembrancer duty on receipt of report.

102. The Legal Remembrancer will then thoroughly inform himself of the whole of the circumstances, calling for such further information or additional papers as he thinks necessary and communicate his opinion to Government in detail as to the advisability of instituting a suit.

103. If the institution of the suit be sanctioned, a draft of the plaint will be prepared by the Government Pleader of the district in which the suit is to be instituted, in consultation with the officer who proposed its institution, and will be submitted by him direct to the Legal Remembrancer for approval. After the Legal Remembrancer has accorded his approvel thereto, the plaint shall be signed, verified and presented by the said Government Pleader. True copies of the plaint, as actually presented in Court, of any written statement filed by a defendent, and of the issues framed in each suit, as well as of any subsequent amendments of the issues or additional issues under rule 5 of Order XIV of Schedule I of the Civil Procedure Code, should also be sent without delay by the Government Pleader to the Legal Remembrancer."

.....

T.G

843/36
14554

Public Works Deptt.

E.B.

Submitted. p-34

2. In Govt.Memo.No.843/36-E. dated the 11-8-37, a compensation of Rs.550 admissible under the Workmen's Compensation Act was sanctioned to the dependents of the deceased coolie Krishna Bhoja, who, whilst employed on a work on the Bijapur-Kagwad Road in the Belgaum Divn., was knocked down by a motor lorry and died as a result of the injuries caused by the accident. The S.E. was asked to recover the amount from the Shri Laxmi Motor Service, Kolhapur the owner of the lorry. Mr.Shinde, the driver of the lorry, as also the Shri Laxmi Motor Service refused to accept the liability. p.41

3. The R.L.A. who was consulted in the matter is of opinion that, under Sec.13 of the Workmen's Compensation Act Govt. can claim to be indemnified for the amount of Rs.550 paid by them as compensation to the heirs of the deceased coolie but suggests that a civil suit will be necessary for the purpose. If it is decided to file a suit the draft put up overleaf will meet the case. Mb 49-51

14-8-38

843/36.

No.843/36-E.
Public Works Deptt.
B.C., 8th July 1938.

Memorandum.

Subject:-Workmen's Compensation.: Krishna Bhoja, a cooly employed on work on the Bijapur Kagwad Road in the Bijapur Divn.

With reference to the correspondence ending with his letter No.G.1/Bj., dated the 23rd May 1938, the S.E.,S.C., is informed, with compliments that Govt.have decided that a civil suit should be filed for the recovery of the amount of Rs.550 which have been paid by them as compensation to the heirs of the deceased coolie, Krishna Bhoja, who whilst employed on the work of the Bijapur-Kagwad Road was knocked down by a motor lorry and died as a result of the injuries caused by the accident. The Laxmi Motor Service Coy and Mr.Shinde should both be made parties to the suit and it is left to the Court to decide whether both or either of them would be liable.

2. The S.E.is requested to submit a detailed report to Govt.in the matter as required by Law Officer's Rules 99 to 103.

By order of the Govr.of Bombay, D.A.-Nil.

M.K.P.
13-7-38.

No.843/36-E.
Public Works Department,
Bombay Castle, 8th July 1938.

Subject: Workmen's Compensation:
Krishna Bhoja, a cooly employed on work on the Bijapur Kagwad Road in the Bijapur Division.

.....

Memorandum

With reference to the correspondence ending with his letter No.G.1/Bj., dated the 23rd May 1938, the Superintending Engineer, Southern Circle, is informed, with compliments, that Government have decided that a civil suit should be filed for the recovery of the amount of Rs.550 which have been paid by them as compensation to the heirs of the deceased coolie, Krishna Bhoja, who whilst employed on the work of the Bijapur-Kagwad Road was knocked down by a motor lorry and died as a result of the injuries caused by the accident. The Laxmi Motor Service Company the owner and Mr. Shinde the driver of the lorry should both be made parties to the suit and it should be left to the Court to decide whether both or either of them would be liable.

2. The Superintending Engineer is requested to submit a detailed report to Government in the matter as required by Law Officer's Rules 99 to 103.

By order of the Governor of Bombay,

Deputy Secretary to the Government of Bombay,
Public Works Department.

D.A.- Nil.

Copy to the Remembrancer of Legal Affairs with reference to his No.6507, dated 1st July 1938.

Typed by G.J.P.
9-8-38
Compared by

(15-9-38)

ISSUED
11 AUG 1938

No.G-1/Bj. Public Works Department,
Belgaum, 3rd August, 1938.

From

P.K.Shinde, Esquire, I.S.E.,
Superintending Engineer,
Southern Circle.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Workmen's Compensation:
Krishna Bhoja, a cooly employed on work on the Bijapur Kagwad Road in the Bijapur Division.

Sir,

I have the honour to invite reference to this Office endorsement No.G-1/Bj, dated 11th February, 1938, and subsequent expeditor dated 23rd May, 1938 and to request the favour of early orders in the matter.

I have the honour to be,

Sir,

Your most obedient servant,

3.8.38

Superintending Engineer,
Southern Circle.

(E-B) P. W. Deptt.

Submitted.

2. Necy orders have since been issued – vide C.M. No. p.56 843/36-E, dated the 8-9-38.

3. A detailed report from the SE. as per para 3 of the C.M. may be awaited till p.56 -1-9-38.

8 Sep 12-8-38

15/8/38

E P> 4)

Awaik (7-9-38)

A.S

S.E., SE explained.

8.Sep 9-9-38

Es 5/8

PUBLIC WORKS DEPARTMENT
File No. 843/36
4 - AUG 1938
Serial No. 17748

Asst (10-9-38)

EB 6-8-38

ISSUED
9 SEP 1938

No.G-1. Public Works Department,

C/V Belgaum, 29/4 September, 1938.

From

P.K.Shinde, Esquire, I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department,
Bombay.

Subject:- Workmen's compensation:
Krishna Bhoja, a cooly
employed on the Bijapur-
Kagwad Road in the Bijapur
(now Belgaum) Division.

Sir,

With reference to Government expeditor No. P.60 843/36-E/1, dated 9th September, 1938, I have the honour to state that certain documents asked for by the Executive Engineer, Belgaum Division from the District Magistrate, Belgaum, and the Secretary to the Resident for Kolhapur and Deccan States are awaited. On receipt of them, the Government reference will be disposed of.

I have the honour to be,
sir
Your most obedient servant,

Superintending Engineer, S.C.

E.B.

Submitted.

2. The receipt of the requisite report from the S.E.S.C. may be awaited till the end of this month and that officer may then, be expedited, if necessary.

8.11.38
4/5

E.B.

The S.E. S.C., expedited on 9-11-38.

8-11-38

ISSUED
8 NOV 1938

PUBLIC WORKS DEPARTMENT
File No. 843/36
30 SEP 1938
Serial No. 21971

No.G-1. Public Works Department,
Belgaum, 12th November 1938.

From

P. K. Shinde, Esquire, I.S.E.,
Superintending Engineer,
Southern Circle.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Workmen's compensation:
Krishna Bhoja, a cooly employed on
the Bijapur Kagwad road in the
Bijapur (now Belgaum) Division.

Sir, P-62 843/36.

With reference to Government expeditor No.846/36-E, dated 9th November 1938, on the subject mentioned above, I have the honour to state that the documents referred to in this Office No.G-1 P-61, dated 29th September 1938 are still awaited from the Executive Engineer, Belgaum Division who has again been expedited for the same. On receipt thereof, the Government reference will be disposed of.

I have the honour to be,
Sir,
Your most obedient servant,

12.11.38

Superintending Engineer,
Southern Circle.

0-62
Award.

16-11-38

14/11/38.

A-S.

PUBLIC WORKS DEPARTMENT
File No. 843/36
14 NOV 1938
Serial No. 26000

14/11

15/11

14-11-38

Institution of a Civil suit against the Laxmi Motor Service Company the owner and Mr.Vithal Daulat Patil (and not Mr.Shinde) the Driver of the lorry

*****

1. On 21st September 1936, a coolie named Krishna Bhoja in the employment of the Public Works Department was working in mile 58 of the Bijapur Kagwad Road. At about noon on that day, Mr.V.D. Patil of Kolhapur was driving a public motor bus bearing No.Kop-396,belonging to Laxmi Motor Service Company from Shedbal towards Athni. When the Bus came near furlong stone 57/6, it knocked down the road coolie Krishna Bhoja who suffered several injuries and died as a result of injuries the very night at about 9 P.M. in the Athni Dispensary.

No
Page 1 of the Case file.

2. On 22nd September 1936, a panchnama of the accidant was held by the Sub-Inspector of Police, Kudchi, Taluka Athni and a post mortem examination was held at the Athni Dispensary on the dead body of the above mentioned coolie.

Pages 117 to 126 of the case file.

Pages 191 to 200 of the case file.

3. On 26th September 1936, the Sub-Divisional Officer (P.W.D.) Indi Sub-Division submitted a report about the occurrence of the accident to the Executive Engineer, Belgaum Division, who, in turn reported it

Page 1 of -do-

(a)to the District Magistrate, Belgaum for prosecuting the offenders,

(b)the Commissioner for Workmen's Compensation, Bombay, for sending 'G' Form if the dependents of the deceased cooly were eligible for compensation under the workmen's Compensation Act 1923,

(c)the Superintending Engineer, Southern Circle,

and

(d)the District Superintendent of Police, Belgaum.

Pages 2 and 3 of the case file.

4. On 8th October 1936, the Commissioner informed the Executive Engineer that as the accident, as a result of which the coolie died, arose out of and in the course of his employment with the Public Works Department under the workmen's Compensation Act only the employers i.e. Government will be liable and if no compensation is deposited as required by section 8(1) of the Act, the dependents of the deceased workman can proceed against Government. That Officer also intimated that under Section 13 of the Act, Government will be entitled to recover the amount of compensation from the

Page 7 of the case file.

person who was, according to them, responsible for causing the injury to the deceased.

Page 13 of the case file.

5. On 21st October 1936, the District Superintendent of Police, Belgaum informed the Executive Engineer that driver Vithal Daulat Patil has been ordered to be prosecuted under Sections 304 A and 279 I.P.C. and also under Section V of M.V.Act.

Pages 15 to 18 of the case file.

6. On 29th October 1936, the Superintending Engineer,S.C. reported the details of the accident to Government and applied for their sanction to deposit the amount of Rs. 550/- with the Commissioner for payment as compensation to the dependents of the deceased coolie and proposed that Laxmi Motor Service Company who were responsible for the death of the coolie should be asked through the Resident for Kolhapur and Deccan States to arrange for the payment of the amount viz. Rs. 550 to Government.

Pages 107 to 116 of -do-

7. On 22nd March 1937, the Subordinate Judge and Magistrate, First Class,Athni delivered judgment in criminal case No.102/1936 holding the accused motor driver Vithal Davlat Patil guilty and convicting him under Section 304 A Indian Penal Code and

Section 5 Indian Motor Vehicles Act

and sentenced the accused to pay a fine of Rs. 75/- on the first count and Rs. 25 on the second count or in default to undergo 3 weeks' rigorous imprisonment on the 1st count and one weeks rigorous imprisonment on the second count. He further added a rider directing that in case the fine is recovered, Rs. 50/- should be paid as compensation to the widow of the deceased.

8. On 11th August 1937 Government accorded sanction to deposit the amount of Rs. 550/- with the Commissioner for payment to the dependents of the deceased cooly and also approved of the Superintending Engineer's proposal to ask the Laxmi Motor Service, Kolhapur, whose driver was responsible for the fatal accident, through the Resident for Kolhapur and Deccan States, to arrange for payment to Government the amount of compensation viz. Rs.550/-

Pages 63 to 66 of the case file.

9. On 20th August 1937, the Executive Engineer sent the amount of Rs. 550/- by R.T.R. to the Commissioner as a deposit for payment to the dependents of the deceased cooly and requested the Resident for Kolhapur to ask the Laxmi Motor Service to pay into the Kolhapur Resident Treasury the sum of Rs. 550/-

Page 69 of the case file.

Page 71 of -do-

Page 83 of the case file.

10. On 29th January 1938, the Resident for Kolhapur and the Deccan States informed the Executive Engineer that the Kolhapur Durbar which was asked to recover the amount of Rs.550/- ~~xxx~~ say that it could not be ~~xxxx~~ recovered as the Shri Laxmi Motor Service, Kolhapur, owner of the motor car No.Kop-396 states that though the car nominally belongs to them, it has been purchased by Mr.H.B.Shinde on the hire purchase system who should be held responsible for the damages. Mr.Shinde, however states that as the case arising from the accident has been decided in his favour, he is under no legal liability to pay any damages.

Page 91 of the case file.

11. On 8th August 1938 Government intimated that they have decided that a civil suit should be filed for the recovery of the amount of Rs. 550/- which have been paid by them as compensation to the heirs of the deceased coolie making the Laxmi Motor Service Company the owner and Mr.Patil (and not) Shinde) [driver] as parties to the suit.

Pages 107 to 117 of the case file.

12. The Subordinate Judge and Magistrate, First Class, Athni in his judgment dated 22-3-1937 has given his finding that the death was caused by the accused's (Mr.Patil's) rash

and negligent act while driving his bus on the public road.

13. The defence is likely to rely upon one circumstance which finds place in the Panchnama viz. that the deceased cooly in order to get hold of his child, which he thought might be run over by bus, suddenly rushed across the road and in doing so was knocked down by the bus. The Magistrate has also held in his judgment that the deceased was struck by the bus when he was crossing the road to catch hold of his child which was on the other side of the driver.

Page 124 of the case file.

Page 113 of the case file.

14. In case, a decree is obtained against the Laxmi Motor Service which is worth Rs. 10,000/- and which runs its buses in the British limits also, it is likely that execution of the decree will be obtained.

Page 101 of the case file.

Superintending Engineer,S.C.

No.G-1. Public Works Department,
Belgaum, / ~~November~~ 31st December 1938.

From

P. K. Shinde, Esquire, I.S.E.,
Superintending Engineer,
Southern Circle.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Workmen's compensation:
Krishna Bhoja, a cooly employed on work on the Bijapur Kagwad road in the Bijapur Division (now Belgaum Division).

Sir, p. 57

With reference to para 2 of Government Memorandum No.843-36-E, dated 8th July 1938, I have the honour to submit herewith a detailed report in the matter as required by Law Officer's Rules 99 to 103 together with one case file containing this Office correspondence in 202 pages. It may kindly be returned when done with.

I have the honour to be,
Sir,
Your most obedient servant,

Accompts:-
1 Report.
1 File

Superintending Engineer, S.C.

PUBLIC WORKS DEPARTMENT
File No. 843/36
2 - DEC 1938
Serial No. 27592

843/36

P. W. Deptt.

(E-B)

Submitted

2. The S.E., S.C. has furnished pp. 65-70 the necy. detailed information in respect of the institution of a Civil Suit against the Laxmi Motor Service Co. & the driver of the Lorry under which a cooly was killed. Pl. see para 3 of the R.L.A's no. at p. 51 ante. These papers may now be transferred to the L.D. for necy. further action as per draft put up.

3. That Deptt. may see the draft no. before issue.

S. A. J.
8-XII-38

843/36.
27592

[ Below papers beginning with letter No. C-1/B.M., p.3 dated the 29-10-38 from the S.E., S.C., and ending with the S.E.'s letter No. [illegible], p.71 dated the 1-12-38 and accounts ]

* S.E.S.C.'s file of the case

Subject

Institution of a Civil Suit against the Laxmi Motor Service Co. & others for recovery of Mr. V.D. Patil for recovery of the amt of Rs.550 paid as Workmen's Compensation to the heirs of Krishna Bhoja Dawale, Coolie.

No. 843/36-E.
P.W.D.
Dec. 1938.
B.C.
pp. 1-7
Transferred to the L.D.
for disposal.

By order of the G.G.-in-C.

S.A.
7-XII-38

# Pages 1-7 & Case file

L.D. to see before issue

# RECEIVED
6 JAN 1939

10 DEC 1938
P.W.D.

8/12

+ Not received.

Issue w.o. with the copy of the draft
9/12

W.O. to L.D. of 10th Dec. 1938.

L.D.
the transfer of the papers is accepted
for Secy. to Govt

22/12
A.S.

BY THE GOVERNMENT
LEGAL DEPARTMENT
Case No.
Sue No. 13313
A & 14/12
Accounts not read.

L. 843/36
22 DEC 1938
SECTION

EB
22-12-38

W.R. to P.W.D. No. 9553
Dated. 22-12-38

G.C.H.J.

Below case file regarding Workmen's Compensation. Krishna Bhoja, a cooli employed by the P.W.L.

*****

No. 9645

Legal Department.

Bombay Castle, 23rd December 1938.

Forwarded with compliments to the Public Works Department in continuation of this office U.R. No.9553, dated the 22nd December 1938.

for Secretary to the Government of Bombay,
Legal Department.

File E.B
23/12

Case file

PUBLIC WORKS [illegible]
File No. 843/36
23 DEC 1938
[illegible] No. 29449

for 23/12

EB
23/12-38

843/36
27592

(E-B).

P. W. Deptt.

Pl. keep copies of
pp 34-35, 45-46, 49-51
55 & 56

Same the draft at p. 74 ante.

S.a.g.
23-12-38

31/1/39.

AS

draft p. 74 (Cancel
Keep copy of pp. 34-35,
45-46, 49-51 + 55-56.
31/1

31/1

31/1 (5-2-39)

No.G-1.

Public Works Department,
Belgaum, 8th May 1939.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Workmen's compensation:
Krishna Bhoja, a cooly employed on the work of Bijapur Kagwad Road in the Bijapur Division (now Belgaum Division).

Sir,

I have the honour to invite a reference to this Office letter No.G-1 dated 1st December 1938 and to request that the case file containing this Office correspondence in 202 pages may kindly be returned if no longer required and the decision, if any,

arrived

No.G-1.

Public Works Department,
Belgaum, 8th May 1939.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Workmen's compensation:
Krishna Bhoja, a cooly employed on the work of Bijapur Kagwad Road in the Bijapur Division (now Belgaum Division).

Sir,

I have the honour to invite a reference to this Office letter No.G-1 dated 1st December 1938 and to request that the case file containing this Office correspondence in 202 pages may kindly be returned if no longer required and the decision, if any,

arrived

arrived at in the matter communicated to this Office.

I have the honour to be,
Sir,
Your most obedient servant,

W. C. Greenup

Superintending Engineer, S.C.

8/5/39

PUBLIC WORKS DEPARTMENT
File No. 843/36
9 MAY 1939
[illegible] No. 11324

W.C.A.D

9.5.39

843/36

(G-B)

Submitted.

2. The case file refd. to in the letter under disposal was sent to the L.D. p.79 along with Govt. endt No 843/36-E, p.74 dated the 4th Jany. 1939. These papers may be shown up to the E.D. with a request to return the file, if no longer reqd. That Deptt may also be requested to state whether any decision has been arrived at in the matter of recovery of Rs 550 from the Laxmi Motor Service Co & its driver.

S.A.G.
11-5-39.

11/5/39

AS

Issued
11/5

S.O. to L.D. 12th May 1939

12 MAY 1939
S G

THE STATE TO GOVERNMENT
LEGAL DEPARTMENT
File No.
Stab No. 6136
Received A 12/5/39

Legal Department.

The Public Works Department is informed that the orders in the case will be issued soon and the file containing correspondence on the subject will also be sent with the orders.

(E-B)

Submitted.

2. A further communication (as also the file referred to at p. 81 ante) from the L.D. may be awaited till the end of this month.

S.R.G.
16-5-39

14/5/39.

A.S.

(1-6-39)
17/5

(E-B).

Resubmitted.

2. These papers may again be refd. up. to the L.D. with a request to state whether any decision has been arrived at in the matter of recovery of Rs 550 from the Laxmi Motor Service Co or its drivers and whether the file regd. by the S.E.-S.E. can be made available for return to the S.E.

S.R.G.
2-6-39

13/6/39

Secy. to Govt. Legal Department
Diary No. 7029
Branch A 15/6/39.

PUBLIC WORKS DEPARTMENT
File No. 843/36
13 MAY 1939
Serial No. 1169

13-6-39

14 JUN 1939

Secy. to Govt. P.W.D.

No. to Ld. S. 14th June 1939.

Legal Department

The case is under submission to Govt. and the orders will be issued within a week or so. The file required by the S.E., S.C. will be sent with the Govt. orders.

19/6.

P. A. 20/6

A.S.W. 20/6

Lr. No. P.W.D. No. 6513 dated The 21st June 1939.

P. W.D.

(CE-B)

Submitted to [illegible]

2. The receipt of the address of the file refer to in the L-D note overleaf may be awaited.

Sd.
22-6-39.

23/6/39.

AS.

Amin (25-7-39)
23/6

PUBLIC WORKS DEPARTMENT
File No. 843 | 36
21. JUN 1939
Serial No. 14727

CS 21/6

GS
24-6-39

*Suits :*

Belgaum.

Institution of a suit against Shri Laxmi Motor Service Company, Kolhapur, and two others for recovery of compensation paid by Government to a coolie knocked down by a bus under section 13 of the Workmen's Compensation Act, 1923.

## GOVERNMENT OF BOMBAY.

### LEGAL DEPARTMENT.

Resolution No. 6831.

Bombay Castle, 1st July 1939.

Letter from the Superintending Engineer, Southern Circle, Belgaum, No. G. 1, dated the 1st December 1938—Forwarding a report under rules 99 to 103 of the Law Officers Rules together with papers and requesting that a suit may be instituted against (1) Shri Laxmi Motor Service Company, Kolhapur, (2) Mr. H. B. Shinde and (3) Mr. V. D. Patil for recovery of compensation paid by Government under section 13 of the Workmen's Compensation Act, 1923.

Endorsement by the Public Works Department, No. 843/36-E, dated the 4th January 1939—Tranferring the above for disposal.

RESOLUTION.—The institution of a suit against (1) Shri Laxmi Motor Service Company, Kolhapur, (2) Mr. H. B. Shinde and (3) Mr. V. D. Patil for recovery of Rs. 550 should be sanctioned on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

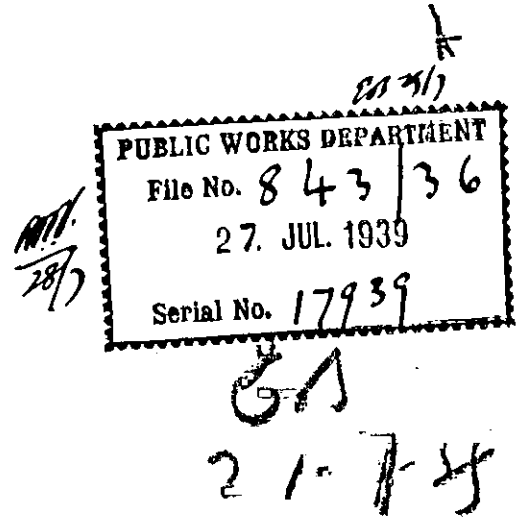
To

The Public Works Department,
The Superintending Engineer, Southern Circle, Belgaum,
The Executive Engineer, Belgaum Division,
The District Government Pleader, Belgaum.

---

No. of 1939.

Copy forwarded for information and guidance to



INSTITUTION OF A SUIT.

*Chronological Statement of Facts.*

p. 1 of the case file. On 21st September 1936 one Krishna Bhoja a coolie in the employment of the Public Works Department was knocked down near furlong stone 57/6 of the Bijapur-Kagwad Road by a Public Motor Lorry No. Kop-396 belonging to the Shree Laxmi Motor Service Company, Kolhapur, and driven by one Vithal Doulat Patil. As a result of the accident, the coolie died at the Athni Dispensary the very night.

pp. 2 and 3 do. 2. On 2nd October 1936, the Executive Engineer, Belgaum, reported the accident to (1) The District Magistrate, Belgaum, for prosecuting the offenders and (2) the Commissioner for Workmen's Compensation, Bombay, enquiring whether the dependants of the deceased coolie were eligible for compensation under the Workmen's Compensation Act, 1923.

3. On 8th October 1936, the Commissioner for Workmen's Compensation informed the Executive Engineer that as the accident took place during the course of employment of the coolie by the Public Works Department, Government would be liable to compensate the dependants of the deceased under section 8 (1) of the Workmen's Compensation Act, 1923.

pp. 15 to 18 of the file. 4. On 29th October 1936, the Superintending Engineer, Southern Circle, reported the case to Government requesting sanction to deposit Rs. 550 with the Commissioner for payment as compensation to the dependants of the coolie and also proposed therein that the Laxmi Motor Service Company should be asked through the Resident for Kolhapur and Deccan States to arrange to pay the said amount to Government.

pp. 107 to 116 do. 5. In the meantime, the bus driver, Vithal Doulat Patil, was prosecuted under sections 304-A and 279, Indian Penal Code, and section 5 of the Indian Motor Vehicles Act, 1914, in the Court of the Sub-Judge and First Class Magistrate, Athni, who on 22nd March 1937 convicted and sentenced him to a fine of Rs. 75 on the first count and Rs. 25 on the 2nd count.

pp. 63-66 do. 6. On 11th August 1937, Government accorded sanction to deposit the sum of Rs. 550 with the Commissioner and approved the proposal as to request the Resident to recover the amount from the

p. 69 do. Laxmi Motor Company, accordingly on 20th August 1937 the Executive Engineer remitted the amount to the Commissioner and also requested the Resident for Kolhapur to arrange to recover the amount from the Laxmi Motor Service Company.

p. 83 do. 7. On 29th January 1938, the Resident informed the Executive Engineer that as the owner of the Laxmi Motor Service, Kolhapur, had disposed of the said lorry to Mr. H. B. Shinde on hire-purchase system, the sum of Rs. 550 could not be recovered by the Kolhapur Darbar and that Mr. Shinde refused to pay the sum on the ground that the decision of the Court has been given in his favour.

8. On 8th August 1938, Government informed the Superintending Engineer, Southern Circle, that Government have decided to file a suit against both the persons, i.e. the owner of the Laxmi Motor Service Company, and H. B. Shinde leaving it to the Court to decide whether both or either of them would be liable and requested him to submit the papers in the case. p. 91 of the file.

9. It is now proposed to file a suit accordingly.

---

*Memorandum of Instructions.*

*Parties.*—This is a suit to be filed by the Government of Bombay who should be described in the plaint as the Province of Bombay as required by section 79 of the Civil Procedure Code as amended by the Government of India (Adaptation of Indian Laws) Order, 1937. The defendants to be named are: (1) Shri Laxmi Motor Service Company of Kolhapur, (2) Mr. H. B. Shinde and (3) V. D. Patil. The District Government Pleader should ascertain if the first named company is a body corporate according to the law in the Kolhapur State, and if so, the name and address of its director or other principal officer to be named in the plaint. If it is partnership firm, the names and addresses of the partners should be ascertained and stated in the plaint. Similar details regarding the other two defendants should also be ascertained through the Executive Engineer, and should be stated in the plaint.

2. *Forum.*—The cause of action for the suit comprises the (1) accident as a result of which coolie died and (2) payment of compensation by Government. The accident took place near mile 58 on the Bijapur-Kagwad Road, within the special territorial jurisdiction of the First Class Sub-Judge of Belgaum, and since Government is a party to this suit, his Court is the lowest Court competent to entertain the same. The suit should therefore be filed in the Court of the First Class Sub-Judge at Belgaum.

3. *Merits.*—Section 13 of the Workmen's Compensation Act provides that where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid shall be entitled to be indemnified by the person liable to pay damages as aforesaid. In order that Government's claim may be sustained under this section, it is necessary to prove :—

(*a*) that compensation has been lawfully recovered from Government; and

(*b*) that the injury was caused in circumstances creating a legal liability of the defendants to pay damages.

4. As regards (*a*) the facts necessary to prove are that the coolie Krishna Bhoja was in the employment of the Public Works Department that he was knocked down by a bus driven by defendant No. 3,

that the accident occurred during the course of his employment, and that as a result of the accident the coolie died. It should also be stated that Government, at the instance of the Commissioner for Workmen's Compensation, deposited with him the sum of Rs. 550 under section 8 (1) of the Act for payment to the dependants of the deceased coolie. These facts probably will not be seriously disputed but should be formally proved by the testimony of eye witnesses, and of the medical officer who attended the coolie at the Athni Dispensary and who conducted the post-mortem examination of his body, and by such other evidence as is available.

5. It should be affirmed that the injury to the coolie and his death were caused in such circumstances as to render the defendants liable in damages. It should be stated that the accident was due to the negligence of the driver of the bus, defendant No 3. Negligence is the absence of the care which a prudent and reasonable man would take in the circumstances (Cunard *v.* Antifyre Ltd., 1933, 1 K.B. 551 at page 560). Whether the accident was due to the negligence of defendant No. 3 is therefore a question of fact, and the District Government Pleader should lead such evidence as is available on the point. The following circumstances may be emphasised. In the first place the road at the point where the accident occurred was under repairs. Presumably there were signs posted to intimate the fact to the traffic and this should be proved by evidence. Nevertheless defendant No. 3 appears to have driven the bus at a great speed. As a result of the impact between the bus and the coolie the right front mud-guard of the bus was pressed down about 6 inches, the lamp glass was broken, and the lamp itself was embedded in the mud-guard. This furnishes the indicia of the pace at which the bus was travelling. Having regard to the fact that the road was under repairs, a prudent and reasonable man would have lessened the speed of the bus in order to avoid injury to persons who may be working on the road. The failure of defendant No. 3 to do so amounts to negligence. Secondly, defendant No. 3 himself alleged before the Magistrate that he blew the horn when the car was about a furlong away from the scene of the accident. It is plain he could see the coolie going across the road in order to save his child from being run over. A reasonable and prudent man would in such circumstances apply the brakes and bring the machine under control in order to avoid running over the child or the man. The driver in this case, however, did not do so, for as pointed out above the bus was travelling at a great pace even at the moment the accident occurred. This again goes to establish negligence on his part. It is clear therefore that the accident was the result of negligence on the part of the defendant No. 3.

6. It will be probably contended on behalf of the defendants that the coolie's own negligence contributed to the accident and consequently to his death, and therefore they are not liable. It appears that the coolie was originally on one side of the road

and he went over to the other side, on seeing the bus approaching, in order to save his child from being run over. But this by itself does not contribute negligence nor afford to the defendants any ground for escaping liability. On the contrary, it was a natural and proper thing for him to do, and in the circumstances, the priniciple of *volenti non fit injuria* does not apply (*vide* Brandon *v.* Osbornes Garret & Co., 1924, 1 K.B. 548; Cutler *v.* United Dairies Ltd., 1933, 2 K.B. 296, at page 306; Haynes *v.* Harwood, 1935, 1 K.B. 146 at page 163). Assuming for a moment that the coolie's action in crossing the road is to be characterised as negligent, that negligence arose out of the priar negligence of defendant No. 3 in travelling at such a speed as to put the child in danger, and therefore cannot relieve the driver of his liability in law (Admialty *v.* S. S. Volute, 1922, 1 A.C. 129. Mahaffy and Dodson, Law relating to Motor Cars, 3rd edition, page 82). Apart from the considerations, the burden of proof of the contributory negligence on the part of the coolie rests on the defendants, and it will be for them to establish that (1) he might, by the exercise of ordinary care have avoided the consequences of the driver's negligence and (2) that the driver could not have by the exercise of care on his part, avoided the consequences of the coolie's negligence (*vide* Butterfield *v.* Forrester, 11 East, 6; Bridge *v.* Grant Junction Railway Company, 3 M. & W. 244. Davies *v.* Mann, 10 M. & W. 546; Swalding *v.* Cooper, 1931, A.C.1.). In this case it is difficult to perceive how the coolie could have avoided the accident except by not crossing the road as he did with the risk of allowing his child to be run over. In crossing the road he was impelled by the motive of saving his child who stood the danger of being run over, and his action cannot therefore be deemed to be negligent. On the other hand, it is clear that the driver could have avoided the accident notwithstanding this action on the part of the coolie. The driver had seen him crossing the road when the car was a furlong off, and he had ample opportunity to apply the brakes and stop the car. Even assuming negligence on the part of the coolie it would appear that the accident could have been avoided by defendant No. 3; it was not therefore the proximate cause of the accident. Consequently it is clear beyond doubt that the accident was the result of the driver's failure to use ordinary care and diligence in the management of the bus. He is therefore legally liable in damage (Davis *v.* Mann *op. cit.*; Radley *v.* L. & N. W. Railway, 1 A.C. 754; Speight *v.* Tedcastle, 1881, 6 A.C. 217).

7. *Liability of defendants.*—Defendant No. 3 is the driver whose negligence caused the injury and is plainly liable. Defendant No. 1 was the owner of the bus on the material dates and if so would be liable in damages for the act of defendant No. 3 (*vide* Clerk and Lindeellon Torts at page 68 *et seq*; Ratanlal on Torts, 11th edition, page 72 *et seq*). The case of defendant No. 1, however, is that although he was the nominal owner of the bus on the

date of the accident, the control thereof had already passed to Mr. H. B. Shinde who had taken it over under a hire-purchase agreement. Since defendant No. 1 admitted that he was the owner of the car, though a "nominal" one, a presumption arises that the person who drove the car was his servant or agent. It is open to him, however, to produce the hire-purchase agreement and such other evidence to show that the car at the material time was under the control of Mr. Shinde (Liladhar Chaturbhai v. Hiralal Jethabhai, I.L.R. 1937 Bom. 268). It is clear, however, that one or the other of the two defendants, is liable for the negligence of defendant No. 3 and possibly both are liable if it appears that they owned the car and were in control of the same. They are impleaded in the suit in order that the suit may not be unfructuous by reason of non-joinder of a party, and in order to enable the Court to adjudge whether both or either of them are liable.

8. *Relief.*—The next question is as to the relief claimed. In ordinary cases of torts where the injured party itself sues the tortfeasor the relief sought for and granted is damages. But the Government's claim in this case is not for damages, and no evidence on the point need be led. The claim rests on the specific provisions of section 13 of the Workmen's Compensation Act, 1923. The discussion in paragraphs 3-6 above clearly shows that the conditions requisite to invite the operation of that section are present in this case. Government is therefore entitled to be indemnified by the defendants to the extent of the compensation paid.

9. It should be urged for these reasons that the defendants are liable to pay to the plaintiff the sum of Rs. 550 with interest from suit date and the costs of the suit, and a decree in these terms should be prayed for.

843/36
17939

(E.B.)

Submitted.

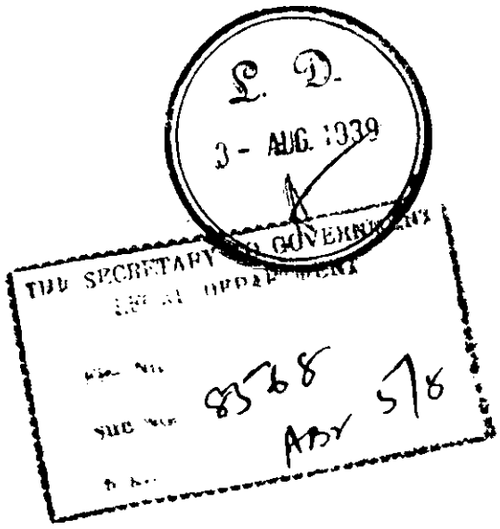
2. Pl. see L.D. ltr. at p. 85 ante. That Deptt. may be requested ltr. to return the S.Es file containing his office correspondence, as promised p. 85

S.Q. 31-7-39

AS

Issue N.O. 2/8

N.O. to L.D. 3 Aug. 1939



p 3

Below papers beginning with letter No. G-1/BM, dated the 29th October 1938, from the Superintending Engineer, Southern Circle and ending with the Superintending Engineer's letter p.21 No. G.1, dated the 1st December 1938 and accompaniments regarding institution of a suit against the Laxmi Motor Service Co. and its driver Mr. V.D. Patil for recovery of the amount of Rs.550/- paid as Workmen's compensation to the heirs of Krishna Bhoja deceased coolie.

---

No. 7945

Legal Department.

Bombay Castle, 7th August 1939.

Retransferred to the Public Works Department as they are no longer required.

By order of the Governor of Bombay,

Assistant Secretary to the Government of Bombay,
Legal Department.

dpm.

843/36
18869

E.B. P.W.D.

The S.D. has not returned the S&E. S.C's file referred to in this p.25 O.N., dt this 31-7-39. Unless that cchlt. has forwarded it direct to the S&E. S.C. that cchlt may be requested p.29 U.O. to return it to this cchlt for being transmitted to the S&E. S.C. who requires it.

This F.B.

10/8/39

11/8/39

10/8/39

A.S.

PUBLIC WORKS DEPARTMENT
File No. 843/36
16 AUG. 1939
Serial No. C

L. D.
14. AUG. 939

8848
14/8

U.O. to L.D. dt 14th Aug. 1939.

L.D.

The file containing the case papers is forwarded to the D.G.P. Belgaum along with a copy of the brief for the institution of the suit.

14/8

PA 14/8

A.S. 14/8

U.O. to P.W.D. no. 8223 dt. 16th Aug 1939

PUBLIC WORKS DEPARTMENT
File No. 843/36
8 - AUG. 1939
Serial No. 18869

8/8

813

843/36
18669

No 843/36 E.
P. W. D.
B.C./8, 17th Aug 1939

Sub:- Workmen's compensation:
Krishna Bhoja, a coolie employed on the work of the Bijapur Kagwad Rd in the Belgaum ~~Bijapur~~ Dist.

memo

With reference to his letter No G.1, dt the 8-5-39, on the subject mentioned above, the S.E. S.C., is informed, with compliments, that the case file ref'd to by him has been forwarded to the Govt Pleader, Belgaum, along with a copy of the brief for the institution of the suit. Vide G.R. & D. No 6831, dt the 1-7-39.

By order of the Supdg.

831
17/8/39

Copy, with compliments, to the D.G.P., Belgaum, with a request to return the case file ref'd to the S.E. S.C., after done with.

831
17/8/39

17/8/39

ISSUED
22. AUG. 1939
MMB.

A.S.

15/8
18/8

17/8

11

843/36
18869

150

1-5-40.

Amrit (1-5-40)

9/-

Ref. This file was put up with file 3772/36 & became available on 28-5-40

Ans
29.5.40

M. Jackson
3/8/40

No 843/36 E.

P.W.D.

B.C. 10th Aug 1940.

Sub:— Institution of a suit against Shri Laxmi Motor Service Coy, Kolhapur and two others for recovery of compensation paid by Govt to a cooly under the Workmen's Compensation Act.

memo

The attention of the S.E. S.C. is invited to G.R., L.D. No 6831/37 dated 1-7-39, on the subject mentioned above and he is requested, with compliments, to communicate the result of the suit.

By order of the S.T.B.

821
7/8/40

ISSUED
12. AUG. 1940

7/8/40

For
M.S.

7/8 2/ 8/8

Amrit (15-9-40)
13/8

No.G-1.

Public Works Department,
Belgaum, 24th August 1940.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer,
Southern Circle.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Institution of a suit against Shri Laxmi Motor Service Company, Kolhapur and two others for recovery of compensation paid by Government to a cooly under the Workmen's Compensation Act.

Sir,

With reference to Government Memorandum No. 843/36-E, dated the 10th August 1940, I have the honour to state that the District Government Pleader, Belgaum, reports that regular proceedings have not yet been started in connection with the above mentioned suit as the summons sent to the defendents four times were returned unserved.

2. The correct addresses of the defendents are once again being ascertained and the Government Pleader asked to serve the summons through the Resident for the Deccan States at Kolhapur.

I have the honour to be,
Sir,
Your most obedient servant,

L. E. Greening
24/8/40.

V.M.T.

Superintending Engineer, S.C.

Await further Fdevelopments
till 1-10-40.

29-8-40.

29/8/40

A.S

Await (1-10-40)
27/8

19/9

The S.E.S.C. expires under no 843/36 E
29th Oct 1940

Issued
21/10/40

21.10.40

R.B. 28/8

PUBLIC WORKS DEPARTMENT
843/36
18069

21/9

27/8

Await (21-10-40)
21/9

No.G-1.

Public Works Department,
Belgaum, 27th November 1940.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer,
Southern Circle.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Institution of a suit against Shri Laxmi Motor Service Company, Kolhapur and two others for recovery of compensation paid by Government to a cooly under the Workmen's Compensation Act.

Sir,

With reference to Government Expeditor No. 843/36-E, dated the 21st October 1940, on the subject noted above, I have the honour to state that the District Government Pleader, Belgaum, intimates that the regular proceedings have not yet started in the above mentioned suit as the Defendents are evading service of summons and that a period of about six months more will be required for the disposal of the suit.

I have the honour to be,

Sir,

Your most obedient servant,

L. E. Greening
27.11.40

Superintending Engineer, S.C.

V.M.T.

EB

Await further developments.

Jms
30-11-60

2-12-60

2/12/60.

Amnt (23-1-61)
2/12

EB

Amnt (1-5-61)
28/2

PUBLIC WORKS DEPARTMENT
File No. 843/36
28. NOV. 1960
Serial No. 24041

E.B. 28/11

28/11-60

843/36

the A.R.S.C. expedition under

No. 843/36 E/2 dated 27th May 1941

Issued
27/5/41

Issued
26-5-41

No.G-1.

Public Works Department,
Belgaum, 3rd June 1941.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Institution of a suit against Shri Laxmi Motor Service Company,Kolhapur and two others for recovery of compensation paid by Government to a cooly under the Workmen's Compensation Act.

Sir,

With reference to Government Expeditor No. 6105 843/36-E, dated the 27th May 1941, I have the honour to state that the District Government Pleader,Belgaum, intimates that the above mentioned suit is not yet disposed of and that it is fixed on the 4th June 1941 for service and return of summons to Defendent No.2,

summons

surmons on Defendent Nos. 1 and 3 having now been served.

I have the honour to be,
Sir,
Your most obedient servant,

Executive Engineer, Belgaum Dn
I/C current duties of the
Superintending Engineer, S.C.

V.L.T.

E.B.

Submitted.

2. The recipt of a further communication from the S.E., S.C., may be awaited.

Jms
4.6.41

EB 6/6

PUBLIC WORKS DEPARTMENT
Rec'd. 843/36
4 JUN 1941
Serial No. 10838

No.G-1.

Public Works Department,
Belgaum, 23rd June 1941.

From

L. E. Greening,Esquire,I.S.E.,
Superintending Engineer,
Southern Circle.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Institution of a suit against Shri Laxmi Motor Service Company, Kolhapur and two others for recovery of compensation paid by Government to a cooly under the Workmen's Compensation Act.

Sir,

In continuation of this office letter No. 6107 G-1, dated the 3rd June 1941, I have the honour to state that the hearing of the above mentioned suit has been fixed for the 25th July 1941.

I have the honour to be,

Sir,

Your most obedient servant,

L. E. Greening

Superintending Engineer,S.C.

23/6/41.

V.M.T.

EB

Submitted.

2- The receipt of a further communication from the S.E.;S.C., may be awaited.

Jones
28.6.41

1/7/41.

843/36

(15-8-41)

1/7

Attlee

FB 25/6

S.E.S.C. expedited on 11th Sept 1941 under no 843/36 E.
3

Jones
10.9.41

PUBLIC RECORD OFFICE
FO 843/36
24 JUN 1941
Serial No 12105

issued

EB
1/8/41

EB
2/8/41

No.G-1.

Public Works Department,
C/V Belgaum, 28th September 1941.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer,
Southern Circle.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Institute of a suit against Shri Laxmi Motor Service Company, Kolhapur and two others for recovery of compensation paid by Government to a cooly under the Workmen's Compensation Act.

Sir,

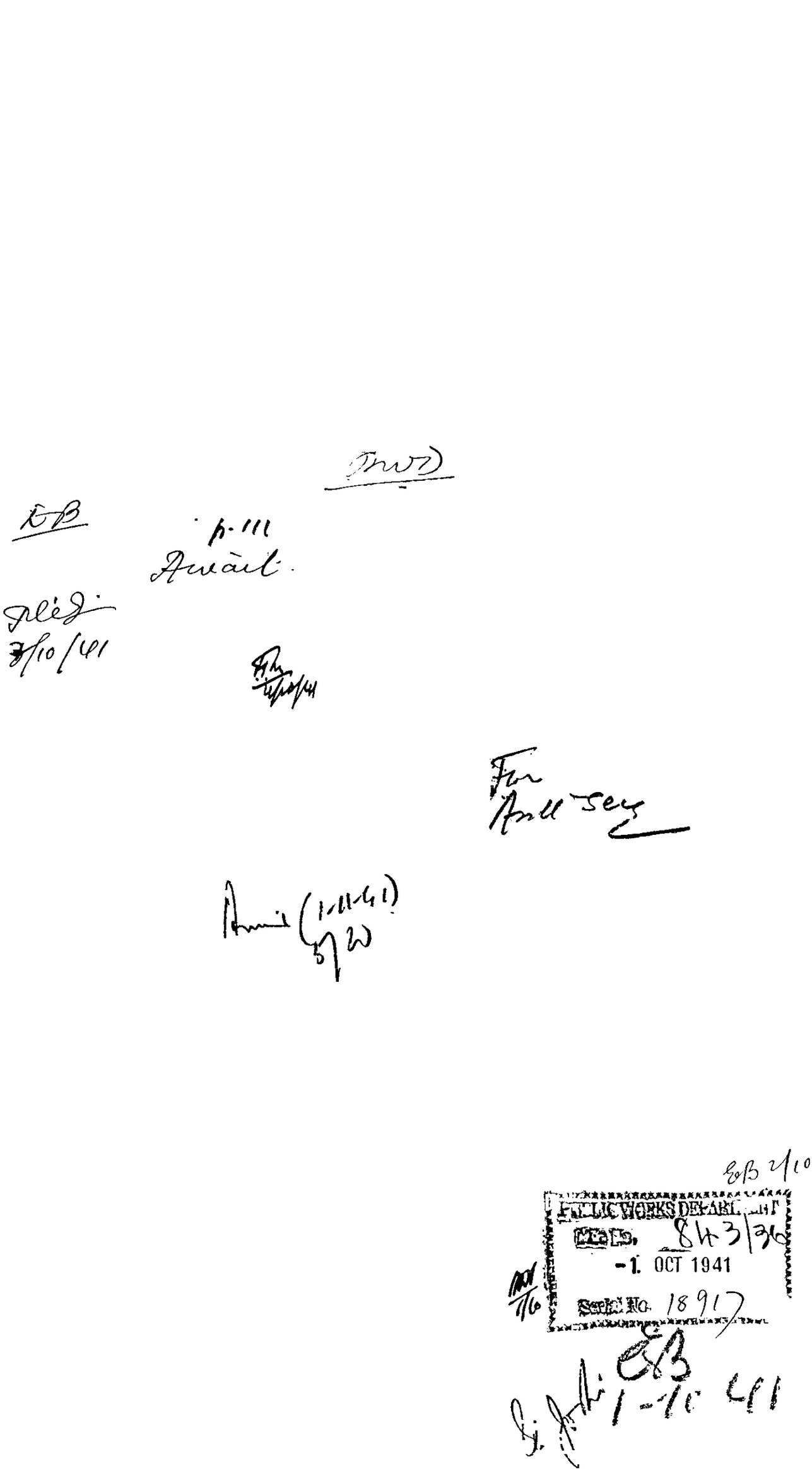
With reference to Government Expeditor No. 843/36-E/3, dated the 11th September 1941, on the subject noted above, I have the honour to state that a report in the matter is awaited from the District Government Pleader, Belgaum, who has been expedited. On its receipt, the Government reference will be disposed of.

I have the honour to be,
Sir,
Your most obedient servant,

L. E. Greening 27.9.41

V.M.T.

Superintending Engineer, S.C.


PUBLIC WORKS DEPARTMENT
-1. OCT 1941
Serial No. 1891

No.G-1.

Public Works Department,
C/v Belgaum, 28th October 1941.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:-Institution of a suit against Shri Laxmi Motor Service Company, Kolhapur and two others for recovery of compensation paid by Government to a cooly under the Workmen's Compensation Act.

Sir,

In continuation of this office letter No.G-1, dated the 28th September 1941, I have the honour to state that the above mentioned suit has been fixed for hearing on the 7th November 1941.

I have the honour to be,
Sir,
Your most obedient servant,

L. E. Greening
28.10.41.

V.M.T.

Superintending Engineer, S.C.

Draft

K.B.

h.11.3
Await.

843/36
1891)

RLG
1/11/41

3/11/41.

Ard Sec GB 31/10

Await (20.11.41)
3/11

Secret
Regd. 843/36
30. OCT. 1941
Dealt. 21018

Mr Joshi

GB.
30-10-41

No.G.1

Public Works Department,
C.V. Belgaum, 20th November 1941.

From

L.E.Greening, Esquire, I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

Subject:- Institution of a suit against Shri Laxmi Motor Service Company, Kolhapur and two others for recovery of compensation paid by Government to a cooly under the Workmen's Compensation Act.

Sir,

In continuation of this office letter No.G-1, dated the 28th October 1941, I have the honour to state that the District Government Pleader, Belgaum, since intimates that the above mentioned suit fixed for hearing on the 7th November 1941, has not yet been decided. The result of the suit will be reported to

Government

Government on hearing from that Officer.

I have the honour to be,
Sir,
Your most obedient servant,

W. A. Leeming 20.11.41.

B.V.G.

Superintending Engineer, S.C.

× 243/3 E
21018

PUBLIC WORKS DEPARTMENT
File No. 843/36.
21 NOV. 1941
Diary No. 22805

EB 22/11.

Await (3-1-42)

No.G-1.

Public Works Department,
Belgaum, 21st January 1942.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department,
BOMBAY.

Subject:-Institution of a suit against Shri Laxmi Motor Service Company, Kolhapur and two others for recovery of compensation paid by Government to a cooly under the Workmen's Compensation Act.

Sir,

In continuation of this office letter No.G-1, dated the 20th November 1941, I have the honour to state that as fresh summons were required to be served on some of the witnesses, the hearing of the above mentioned suit has been adjourned to the 12th February 1942.

2. It is brought to notice that this case has been pending for over a year which is considered an inordinate period.

I have the honour to be,
Sir,
Your most obedient servant,

L. E. Greening 21/1/42

Superintending Engineer, S.C.

V.L.T.

AWD

EB(ON)

The result of the suit may be awaited.

RLS
27/1/42

(1-3-42)
31/1

EB 22/1

PUBLIC WORKS DEPARTMENT
File No. 843/36
22. JAN. 1942
Serial No. 1850

EB
22-1-42

Received on 6.11.39
Registered on 8.11.39.
Decided on 16.2.42
Duration.

In the Court of the F.C.Subordinate Judge's Court at Belgaum.

Pleaders.

Mr.V.J.Mujumdar.

Mr. B.H.Deshpande.

Reg. Civil Suit No.364 of 1939. Exn. No.185

1. The Bombay Province .. ... Plaintiff.
against
1. Shri Laxmi Motor Service Co. by its owner Rao Saheb Anandrao Desai alias Mahagaonkar of Kolhapur.
Ex parte 2. H.B.Shinde trade of Kolhapur.
Ex parte 3. V.D.Patil motor driver of Kolhapur ...Defendants.

Claim Rs. 550/- for both.

The plaintiff sues to recover as follows the compensation from the defendants.

Principal. Rs. 550

Total Rs. 550

Balance still due. Rs. 550=

together with costs and future interest from the defts.

The plaintiff is the Government (Province of Bombay) suing the defendants for indemnifying the plff in the sum of Rs.550/- under S.13 of the Workmen's Compensation Act. The facts alleged in the plaint are as follows:- on 21.9.1936 one Krishna Bhoja, a coolie in the employment of the Public Works Department of the Government of Bombay, was working on the Bijapur-Kagwad road near mile No.57/6. While thus engaged at about 12 noon or 1 p.m. that day he was knocked down by a Public Passenger bus No.Kop-396 going from Shedbal to Athni and belonging to Deft 1 and driven by deft 3. The said bus was being driven very rashly and negligently and as a result of the accident the coolie sustained severe injuries in consequence of which he died that very night at the Athani dispensary - where he had been removed for treatment. Deft 3 was prosecuted by the Police for offences under S.304 A of the Indian Penal Code and S.5 of the Motor Vehicles Act, and was convicted by the F.C.Magistrate Athni on 22.3.1939. Under S.8(1) of the Workmen's Compensation Act the Government had to pay Rs.550/- as compensation to the dependents of the decd coolie on 20-8-1937. Deft 1 as the owner of the bus and defendant 3 as the driver in the employ of deft 1 at the material date are liable in damages to the plff under S.13 of the Workmen's Compensation Act. The Plaint says that deft 2 is impleaded in the suit because deft 1 alleges that at the date of the accident he (deft 1) was only the nominal owner, the bus having been under the control of deft 2 who had taken it over under a hire purchase agreement. Plff, therefore, claims to be indemnified from the defts in the sum of Rs.550/- and future interest

2. Defts 2 and 3 have not appeared and contested the suit.

Deft 1 denies his liability and contends that he had given the bus to deft 2 under a hirepurchase agreement and was only the nominal owner of the bus on the date of the accident; that the possession and control of the bus had been with deft 2; that deft 3 was never employed by deft 1 and was not in deft 1's service; that the plff has no cause of action against deft 1; that deft 1 has no knowledge of the alleged accident on 21.9.36 and that the suit is timebarred.

3. Issues.

(1) Does deft 1 prove that he had ceased to be the owner of the bus which caused the accident, on the material date?

(2) Does plff prove that deft 3 was in the service of deft 1 to drive the bus on that date?

(3) If so, does deft 1 prove that he is not liable in damages?

(4) Is the suit in time?

(5) What damages, if any, is plff entitled to and from which of the defts?

(6) What decree?

4. My findings are:-

(1) No. (2) No. (3) Deft 1 is not liable. (4) Yes
(5) Rs. 550/- with future interest; from defendants 2 & 3
(6) As per final order.

Reasons.

5. The plaint allegations that the bus was being driven by deft 3 rashly and negligently and that the accident which was thereby caused resulted in severe injury to the consequent death of Krishna Bhoja while he was in the course of the employment of the P.W.D. of Government, have not been denied by defts 2 and 3. Under the rules of pleadings they are deemed as admitting the plaint allegations (38 Bom.L.R.577, Shriram Surajmal -v- Shriram); So far as deft 1 is concerned the said accident which was due to the rash and negligent driving up by deft 3 and which ended in the death of the coolie has been sufficiently proved by the evidence adduced by the plff. The evidence shows that just after the accident the driver deft 3 went to the Police Outpost at Mangsuli and gave information to the constable who was in charge. That constable Govind (ex. 76) has deposed that he immediately went to the scene of the accident and after making the panchnama, took to the victim to the Athni dispensary. The medical officer in charge of that dispensary is examined at ex.72. His evidence shows that on 21.9.1936 Krishna Bhoja who was the victim of the motor accident was admitted into the dispensary and on examining him the medical officer thought that as some of the injuries had caused rupture of the lever the victim would die shortly. So he wrote to the Magistrate for recording the dying declaration of the victim. The victim died at 9 p.m. that day. Ex. 73 is the post mortem memo made by the medical officer. Subsequently the Police prosecuted deft 3 for offences under S.304A I.P.C. and S. 5 of the Motor Vehicles Act. The accused was tried and convicted of those offences by the Sub Judge and F.C.Magistrate of Athni. His judgement is at ex.77. The record before me contains sufficient evidence proving that deft 3 by rashly and negligently driving the bus caused the accident which resulted in the death of the coolie Krishna who was working on the P.W.D. road. Under the Workmen's compensation Act the Government had to pay Rs.550/- to the dependants of the deceased. Under S.13 of the Workmen's Compensation Act the Government is entitled to be indemnified by the person or persons who are liable to pay the damages for the said accident. The cause of action for the Government arose on the date on which the payment was made by Government to the dependants of the deceased. That was on 20.8.1937. The present suit is filed within three years therefrom and is in time.

6...

6. Defts 2 and 3 have not come and denied their liability. Plff wants to hold deft 1 liable on the ground that he was the owner of the bus at the material date and was the employer of the driver deft No.3. Deft 1 has denied that deft 3 had been employed by him. As to the ownership of the bus he has said that though he was nominally the owner, the possession and control was with deft 2 who had taken the bus from him on a hirepurchase agreement. That agreement is at ex. 64 which is dated 27.4.1936. It is duly proved by the deft 1's clerk ex.63 It appears from exhs. 63 and 64 that the chassis was purchased by deft 1 who gave it on hire purchase agreement to deft 2 for a sum of Rs. 3306/- out of which Rs. 400/- were first paid by deft 2 for the purpose of having the body built. The remaining amount was made payable by 18 monthly instalments of Rs.160/- and odd. Under the terms of the agreement deft 1 was entitled to take possession of the bus in case deft 2 defaulted in the payment of the instalments as agreed, and he was to be under no liability to return the amount of the instalments already paid by deft 2. Another clause in the agreement was to the effect that till the last pie was paid the ownership of the bus was to remain with deft. 1 Another clause provided that deft 2 had the option of returning the bus to deft 1, but in that event he could not get back the amount already paid. These clauses indicate that the agreement was in fact and in form a true agreement for hire and all that deft 2 obtained was an option to purchase (32 Bom.L.R.64, Bhimji vs. Bombay Trust Corporation). Deft 1 also does not say that he had ceased to be the owner at the date of the accident 21.9.1936; he only says that his ownership was only nominal, the real control and possession of the bus being with the hirepurchaser deft 2. By the date of the accident deft 1 had received only a few instalments under the hire-purchase agreement. The major part of the amount was still to be paid to him. So under the terms of the agreement he was still the legal owner of the bus.

7. On issue No.2 no attempt is made by plff to adduce any evidence to prove that the driver deft 3 was in the employ of deft 1 or had been engaged by deft 1. The evidence of deft 1's clerk ex. 63 shows that deft 3 was the driver engaged by deft 2 and not by deft 1. In view of the hire-purchase agreement, the probability also is that the driver has been engaged by deft 2. I find issue No.2 in the negative.

8. The learned Government Pleader does not argue that even though the driver deft 3 was in the employ of deft 1 on the date of the accident, deft 1 would still be liable in damages for that accident. The legal position is that the liability falls not on deft 1 who had no possession or control of the bus but on deft 2 under whose control the bus was. In support of this proposition the judgment of our High Court which is at ex.61 may be referred to. That was a case for damages under the Fatal accidents Act; but the principle of that decision, in my opinion, applies equally to the present case. I hold that deft 1 is not liable.

9. The liability is on deft 2 and 3. The amount of that liability is the same as the amount which the Government had to pay under the Workmen's Compensation Act to the dependants of the deceased workman.

10. As to the costs of deft 1, I think that the Government cannot be blamed for impleading him in this suit. Ostensibly the bus belonged to him. A board bearing deft 1's name has been affixed to the bus prominently. The finding on issue No.1 also is that he had not ceased to be the owner of the bus on the material date. The hire purchase agreement and its terms were not known to Government. Under these circumstances I think that though the deft 1 escapes the liability for damages, he should bear his own costs.

## O r d e r.

11. Plff to recover Rs.550/- and costs of suit and interest on Rs.550/- at 6 per cent per annum from date of suit till satisfaction from defts 2 and 3.

Deft 1 to bear his own costs.

16.2.1942

Sd/- B.C.Patil,

First Class Subordinate Judge.

*******

B.V.G.

Presented on 6.11.1939
Registered on 18.11.1939

D E C R E E. Ex. 186.

In the Court of the First Class Subordinate Judge, Belgaum

Civil Suit No.364 of 1939.

1. The Bombay Province. .. ... Plaintiff.

against

1. Shri Laxmi Motor Service Company by its owner Raosaheb Anandrao Desai alias Mahagaonkar, age 45, occupation trade, caste (Hindu) Maratha, of Kolhapur (Shahapuri), Kolhapur State.
2. H.B.Shinde, age 32, caste (Hindu) Maratha, occupation trade, residence Shukrawar Peth Kolhapur State, Kolhapur.
3. V.D.Patil age 30, caste (Hindu) Maratha occupation Motor Driver, residence Laxmi Motor Stand, Kolhapur, State Kolhapur. ... .... .. Defts.

Claim Rs.550/- for Court fee and for jurisdiction

In this the plaintiff states as follows:-

1. On 21st September 1936, one Krishna Bhoja a coolie in the employment of the Public Works Department of the Government of Bombay was working on the Bijapur-Kagwad Road near mile No.57/6. While thus engaged at about 12 noon or 1 p.m. that day, he was knocked down by a public passanger bus No.KOP-396 going from Shedbal to Athni, and belonging to deft 1, the Shri Laxmi Motor Service Company Kolhapur driven by one Vithal Doulat Patil defendant No.3 abovenamed. The said bus was being driven very rashly and negligently and a result of the accident the coolie sustained severe injuries in consequence of which he died at the Athni dispensary-where he had been removed for treatment- that very night.

2. Defendant No.3 was prosecuted by the Police for an offence under section 304A I.P.C. and S.5 of the Motor Vehicles Act, and convicted by the Subordinate Judge and Magistrate First Class Athni on 22nd March 1939 and sentenced to pay a fine of Rs.75/- on the 1st count and Rs.25/- on the 2nd count.

3. On the 2nd October 1936 the Executive Engineer, Belgaum reported the accident to the Commissioner for Workmen's Compensation, Bombay enquiring whether the dependants of the deceased coolie were eligible for compensation under the Workmen's Compensation Act 1923. On 8th October 1936, the Commissioner for Workmen's compensation informed the Executive Engineer that Government would be liable to compensate the dependants of the deceased under S.8(1) of the said Act. Accordingly the ~~xxxx~~ sum or Rs.550/- which was compensation payable under sehedule IV of the said act was remitted on 20th August 1937 by the Executive Engineer to the Commissioner.

4. In the present case, the proximate cause of the injuries which resulted in the death of the coolie Krishna Bhoja was the rash and negligent driving of defendant No.3 Vithal Doulat Patil, who was in the employ of defendant No.1 at the material date. Thus defendants Nos. 2 and 3 are obviously liable in damages - defendant No.1 being liable for the act of his servant defendant No.3. Defendant 1 however alleges that he was only nominal owner at the date of the accident - the bus in question having been under the control of deft 2 H.B.Shinde, who had taken it over under a hire purchase agreement. Thus both are impleaded in the suit as party defendants, lest the suit may not be

infructuous for nonjoinder of a party.

5. Under section 13 of the Workmen's Compensation Act the plaintiff is entitled to be indemnified by the defendant in the sum of R.550/-.

6. A demand for payment of Rs.550/- was made from the defendants. But the same not having been recovered from them, the present suit is filed to enforce the payment of the said sum due from them.

7. The cause of action for the suit arose on the day the compensation amount was paid by Government to the Commissioner of Workmen's Compensation under the Workmen's Compensation Act 1923 i.e: on 20th August 1937.

8. The cause of action for the suit includes the accident which took place near mile No.57/6 on the Bijapur Kagwad Road, within the Special Jurisdiction of this Court, and the Government being a party to the suit, this Court has jurisdiction to try the same.

9. The value of the suit for purposes of Court Fee and Jurisdiction is Rs. 550/-.

10. The plaintiff prays that:-

(a) Rs.550/- be awarded from the defendants who are liable to indemnify the plaintiff under Sec.13 of the Workmen's Compensation Act.

(b) Future interest and costs of suit should be awarded

and a decree passed accordingly.

.....

The suit coming this day for final disposal, before B.C.Patil,Esq.,LL.B.,First Class Subordinate Judge, in the presence of Mr.V.A.Mujumdar for plaintiff and Mr.Deshpande pleader for deft No.1 and defts Nos.2 and 3 exp. It is ordered that plff to recover Rs.550/- and costs of suit and interest on Rs.550/- at 6 per cent per annum from date of suit till satisfaction from defts 2 and 3.

Deft 1 to bear his own costs.

.....

Bill of costs.

| | Plaintiff. | Deft. 1 |
|---|---|---|
| Stamp for plaint. | Rs. 41-4-0 | - |
| -do- for power | - | 0-8-0 |
| -do- for exx | 9-0-0 | 12-12-0 |
| Pleader's fees. | 16-8-0 | 16-8-0 |
| Service of process. | 33-14-0 | - |
| Subsistence. | 46-2-0 | 0-6-0 |
| Copying fees. | - | 0-10-0 |
| Total | Rs. 146-12-0 | Rs. 31-12-0 |
| Rejected costs. | 5-0-0 | 0- 8-0 |
| Total | Rs. 141-12-0 | Rs. 30- 4-0 |
| Balance still due | Rs. 141-12-0 | Rs. 30- 4-0 |

Given under my hand and the seal of the Court this 16th day of February 1942.

Sd/- R.K.Shinde, Clerk. Seal. Sd/- F.C. Sub Judge.

Pleader for plff.

Pleader for deft. 1.

Defts Nos. 2 and 3 exp.

No.G-1

Public Works Department,
Belgaum, 20th March 1942.

From

L.E.Greening,Esquire,I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department, B O M B A Y.

Subject:- Civil Suit No.364 of 1939 on the file of the First Class Sub-Judge's Court,Belgaum, for Rs.550/- against The Shri Laxmi Motor Service Company, Kolhapur and two others.

Sir,

With reference to the correspondence ending with this office letter No.G-1, dated the 21st January 1942, I have the honour to state that the Civil Suit No.364 of 1939 instituted against Shri Laxmi Motor Service Company,Kolhapur and two others for recovery of Rs.550/- has been decided by the First Class Sub-Judge, Belgaum, on the 16th February 1942.

2. According to the judgement and decree, ex parte defendant Nos. 2 and 3, i.e. Messrs H.B.Shinde, trader of Kolhapur and V.D.Patil, Motor Driver of Kolhapur, are to pay to Government principal Rs.550/- and costs of the suit amounting to Rs.141-12-0 with interest at 6 per cent per annum on the former from the date of suit till satisfaction.

3. Defendant No.1, i.e. Rao.Saheb Anandrao Desai, owner of Shri Laxmi Motor Service Company, Kolhapur, escapes the liability to pay the amount as it was proved that he was only a nominal owner of the bus which was on the date of the accident under the control of Defendant No.2 who had taken it over under a hire-purchase agreement He is to bear his own costs.

4. The District Government Pleader,Belgaum, is of opinion that the judgement of the trial Court will have to be acquiesced in for the reason stated in para 3 above and also because no evidence was available to prove that Defendant No.3 was employed by Defendant No.1.

5. Agreeing with the opinion of the Government Pleader the Executive Engineer,Belgaum Division, has written to the Remembrancer of Legal Affairs to that effect and in the circumstances I support his recommendation. If, however, an appeal is to be filed, it will have to be filed on or before the 27th of March 1942 and the Remembrancer of Legal Affairs has been informed accordingly by the Executive Engineer while forwarding the certified copies of judgement and decree to him.

6. Copies of the judgement and decree are enclosed herewith.

I have the honour to be,
Sir,
Your most obedient servant,

L.E.Greening
20.3.42

Superintending Engineer,S.C.

Accompts:-
1 Copy of Judgement.
1 Copy of decree.

B.V.G.

Note in E-B. p. 125

Pl. see para.5 of the S.E., S.C.'s letter under disposal. These papers may be refd. to the R.L.A. with a request to state whether an appeal may be filed in respect of the judgment delivered by the first class sub-judge, Belgaum, in ~~repeat~~ suit No. 364 of 1939.

In case the R.L.A. considers that an appeal shd be filed that officer may be requested to return these papers by the 26th inst. as the appeal has to be filed, if necy, on or before the 27th inst.

S.A.J.
24-3-42

14/3

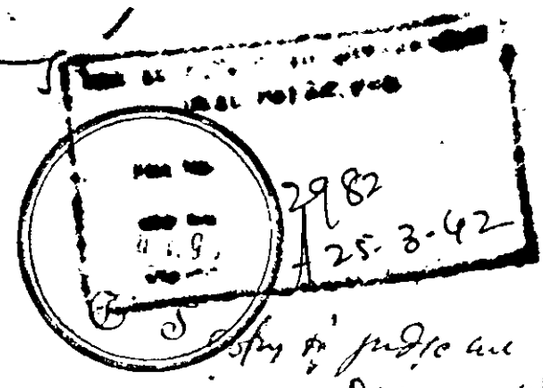
Note

The question is whether the Sirdar ... under service is liable for damages.

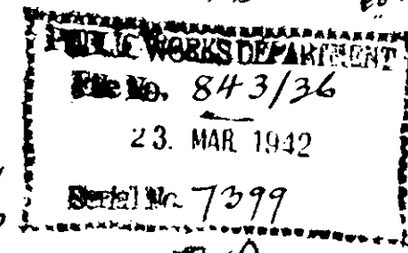
Issued 24/3

V. Argent.

U.O. to R.L.A. 24th March 1942.




Copy of judge and 2 Decs. EB 24/3




23-3-42

Legal Deptt.

Subd.

The main papers in this case have been submitted to Secy. P. W. D. on 25-6-42.

26/3 This may be forwarded in confirmation.

26/3

A.E. 27/3

M.C.R. to P.W.D. No 2757 dated 27-3-42.

(E&S.)

With reference to the
L.d. mtr. (p.12) it may be
stated that that Deptt.
papers were referred to the
Secy. on the 26th inst.
& returned to that Deptt.
on the same day. In those
papers the R.E.A. has proposed
to accept the judgment (pp. 119-12)
of the trial court & the Secy.
has agreed with him.
Necessary orders in the
matter will be issued
by the L.d. Dept may
be awaited

28/3/42

28/3

D.S.

EB 27/3

PUBLIC WORKS DEPARTMENT
File No. 843/36.
27. MAR 1942
Serial No.

30/3

(15-4-42)

EB
27-3-42

Suits:
Belgaum.
Institution of a suit against Shri Laxmi Motor Service Company, Kolhapur, and two others for recovery of compensation paid by Government to a coolie knocked down by a bus under section 13 of the Workmen's Compensation Act, 1923.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 2786

Bombay Castle, 27th March 1942.

Read Government Resolution, Legal Department No.6831, dated the July 1939.

Letter from the District Government Pleader, Belgaum, No.O.S. 364, dated the 7th March 1942 - Stating that the suit noted in the margin was decided by the First Class Sub-Judge, Belgaum on 16th February 1942, when the following order was passed:-

In the Court of the First Class Sub-Judge, Belgaum.
Civil Suit No.364 of 1939.

The Bombay Province. ... .. Plaintiff;

versus

1. Shri Laxmi Motor Service Coy.)
2. H.B.Shinde. ).. Defendants.
3. V.D.Patil. )

Claim Rs.550/-

"Plaintiff to recover Rs.550/- and costs of suit and interest on Rs.550/- at 6 per cent per annum from date of suit till satisfaction from defendants 2 and 3.
Defendant 1 to bear his own costs."

Letter to the Executive Engineer, Belgaum Division, Belgaum, No.2219, dated the 12th March 1942 - Requesting him to forward his report under Law Officers' Rules 132.

Letter from the Executive Engineer, Belgaum Division, Belgaum, No.G-I, dated the 16th March 1942 - Forwarding papers and stating that he agrees with the District Government Pleader, Belgaum that the decision of the First Class Sub-Judge, Belgaum, dated the 16th February 1942 should be acquiesced in.

RESOLUTION.- The result of the suit should be recorded.

By order of the Governor of Bombay,

P. N. MODI,
For Secretary to Government.

To
The Public Works Department,
The Superintending Engineer, Southern Circle, Belgaum.
The Executive Engineer, Belgaum Division, Belgaum (with certified copies of the judgment and decree received with his endorsement No.G-I, dated 16th March 1942).
The District Government Pleader, Belgaum.

B.

Record

1/4/42

E 838/7.

PUBLIC WORKS DEPARTMENT
File No. 843/36
28. MAR. 1942
Serial No. 7977

28-3-42

# L E T T E R.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

No.G-1.

Public Works Department,
Belgaum, 8th December 1943.

Subject:-Civil suit No.364 of 1939 for Rs.550/- against The Shri Laxmi Motor Service Co., Kolhapur and the two others. p. 129

Reference: Government Resolution (L.D.) No.2786, dated the 27th March 1942.

2. The District Government Pleader, Belgaum, has since intimated that of the two judgment-debtors, Mr.H.B.Shinde (Defendant No.2) has sold the house, the only property owned by him, while the other Mr.V.D.Patil (Defendant No.3) seems to possess no property.

3. In the circumstances, therefore, the Government Pleader considers that there is no other manner of proceeding against the two defendants to recover the dues.

4. It is, therefore, requested that Government may, in your concurrence, kindly be moved to sanction the write off of the irrecoverable sums (viz. principal Rs. 550/- plus the cost of the suit Rs. 141-12-0 with interest at 6 per cent per annum on the former from the date of suit) due from the two defendants referred to above, under Rule 162 of the Rules for the Conduct of the Legal Affairs of Government.

5. As the Legal Remembrancer is to be consulted by Government, this reference has been made directly to Government instead of through the Legal Remembrancer.

6. On receipt of Government sanction, the case will be filed.

L.E. Greening, 8.12.43.

V.M.T.

Superintending Engineer, S.C.

Errata Slip to the Fortnightly Wholesale Prices-current Returns, published in the *Bombay Government Gazette*, Part III.

| No. | Station. | Return for the fortnight ending | Date and page of the *Bombay Government Gazette* at which published. | Article. | *For* | *Read* |
|---|---|---|---|---|---|---|
| | | | | | Rs. a. p. | Rs. a. p. |
| 3 | Surat ... | 30th September 1940. | 17th October 1940 ... | Ghi ... | 51 0 0 | 61 0 0 |

Poona, 4th November 1940.

W. J. JENKINS,
Director of Agriculture,
Bombay Province, Poona.

PUBLIC WORKS DEPARTMENT
10 DEC 1943
Serial No. 35236
84 3/36

THE SECRETARY TO GOVERNMENT
CENTRAL DEPARTMENT
No. 11878
Dep. No. A/13725

P. C. 7 DEC 1943 A

(E.B.)
Three copies sent in the first instance, for rep. use of H.E. R.A.F. in connection with the above order.
2. H. S.E. S.C. Ghee ordered.
13-12-43.
Secy.
Secy. to the R.L.A. Standard.
Dy. Secy.
Under Secy.
Dy. Secy.
19.12.43.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Office of the R.L.A.

The Superintending Engineer's letter at page 131 shows that the two judgment-debtors have at present no property against which execution can be taken for the satisfaction of the decree. The circumstance however does not necessarily establish that they will not be able to pay the decretal amount or any part thereof within the limitation period. The amount involved is not inconsiderable, and it is not adviseable to write it off at this stage. Steps may be taken in due time for execution of the decree as required by rule 162(2) of the Law Officers Rules.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 581 , dated the 22nd January 1944.

S.

P43/36

(E.B)

In the circumstances stated overleaf by the R.L.A., the disposal set up may perhaps pass.

19/3/44

17.3.44

EB 24/1

PUBLIC WORKS DEPARTMENT
File No 843/36.
22. JAN 1944
Serial No. 2135

Letter

No.843/36-E. P.W.Deptt.
B.C., 22nd March 1944.

To
The S.E.,S.C.

Subject:-Civil suit No.364 of 1939 for Rs 550 against the Shri Laxmi Motor Service Co.,Kolhapur & two others.

Ref: Your letter No.G.1,dated the 8-12-43.

2. Your request to write off the decretal amounts (viz. the principal of Rs 550 with interest thereon at 6 per cent per annum from the date of the suit, plus the cost of the suit at Rs 141-12-0) due from the two judgment debtors in question, cannot be granted, as the circumstances reported by you do not necessarily establish that the parties concerned will be unable to pay the amount or any part thereof within the limitation period. Besides, the amount involved is not inconsiderable. You are therefore requested please to take steps for the execution of the decree as required

required by rule 162 (2) of the Law Officers Rules.

D.A.-Nil.

By order of the Govr. of Bombay,

BKR
11/3

E.B. (II)

The S.E., S.c. expedites under G.M. No. 843/36-E dated the 13th July 1944.

ISSUED
On 23/3/44

ISSUED
On 18/7/44

required by rule 162 (2) of the Law Officers Rules.

D.A.-Nil.

By order of the Govr. of Bombay,

PKR
11/3

ISSUED
On 23/3/44

E.B. (II)

The S.E., S.C. expedites under G.M. No. 843/36-E dated the 13th July 1944.

ISSUED
On 13/7/44

# L E T T E R.

From

L. E. Greening, Esquire, I.S.E.,
Superintending Engineer, S.C.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

No.G-1.

Public Works Department,
Belgaum, 18th July 1944.

Subject:- Civil Suit No.364 of 1939 for Rs.500/- against the Shri Laxmi Motor Service Company, Kolhapur and two others.

fo-136

Reference: Government Expeditor No.843/36-E/1, dated the 13th July 1944.

2. The matter is at present under correspondence between the Executive Engineer, Belgaum Division and the Kolhapur State through the Resident for Kolhapur. As soon as it reaches the final stage, a further report in the matter will be submitted to Government.

L. E. Greening. 18/7/44

V.M.T.

Superintending Engineer, S.C.

138

Await

24-7-44

24/4/44

E.A.S.

24/10/44 2/7

Await for Sanction

25/7

S.E. expedited 4/12/44

4.12.44

ISSUED
On 4/12/44

21/7

EB(I)

Await 5/1/45

PUBLIC WORKS DEPARTMENT
File No. 84 3/26
20 JUL 1944
Serial No. 20065

EB (II)
21/7/44

# L E T T E R.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

No.G-1.

Public Works Department,
Belgaum, 9th December 1944.

Subject:-Civil Suit No.364 of 1939 for Rs. 550/- against the Shree Laxmi Motor Service Co., Kolhapur and two others.

Reference: Government Expeditor No.843/36-E(II), dated the 4th December 1944.

2. The Executive Engineer, Belgaum Division, has written to the District Government Pleader, Belgaum, through the Collector of Belgaum for taking further action in the matter of recovery of the decretal amount in question, the result of which is awaited. The Executive Engineer has been expedited in the matter and as soon as it reaches the final stage, a further report will be submitted to Government.

8/12

V.M.T.

Superintending Engineer,S.C.

843/36

34294

Await.

DNB
13/12/44

SAJ

FB(II).
Extracts under No. 843/36-F(II).
of the 10th April 1945.

ISSUED

FB
10-4-45.

Filed
10/4/45.

E.B.II
12/12

PUBLIC WORKS DEPARTMENT
File No. 843/36
11. DEC. 1944
Serial No. 34294

Await

# L E T T E R.

To

The Secretary to Government,
Public Works Department,
B O M B A Y.

No.G-1.

Public Works Department,
Belgaum, 26th April 1945.

Subject:-Civil Suit No.364 of 1939 for Rs.500/- against the Shri Laxmi Motor Service Company, Kolhapur, and two others.

Reference: Government Expeditor No.843/36-E(II), dated the 10th April 1945.

2. The matter is still under correspondence between the Executive Engineer, Belgaum, and the Prime Minister, Kolhapur State, through the Resident for Kolhapur. As soon as it reaches the final stage, necessary report in the matter will be submitted to Government.

V.M.T.

Superintending Engineer, S.C.

843/36

EB(II)

Sleeper
1.5.45.

Awaiting
2/5/45.

Awaiting
7.5.45

Sent 8.5.45

EB(II)307/14

WORKS DEPARTMENT
FILE No 843/36
30 APR 1945
14254

* Pelor Executive Engineer, Belgaum Division's endorsement No.G-1/8195, dated the 15th June 1945 regarding Civil Suit No.364 of 1939 for Rs.500/- against Shri Laxmi Motor Service Co., Kolhapur and two others.

*****

No.G-1. Public Works Department,
Belgaum, 23rd June 1945.

Copies together with a copy of the accompaniment, forwarded with compliments, to the Secretary to Government, Public Works Department, Bombay, with reference to this office letter No.G-1, dated the 26th April 1945.

2. Further developments in the matter will be communicated to Government on receipt of information from the Executive Engineer.

* Typed below.

SDK. Superintending Engineer, S.C.

Copy of letter No.L.A./S.A.562 dated the 24th March 1945 from the Collector of Belgaum, to the Secretary to the Resident for Kolhapur and the Deccan States.

...

"The papers of the case ending with No.O.S.364/39 of 9-3-1945 from the District Government Pleader, Belgaum ...

Belgaum are forwarded herewith for favour of instructing the State Government Pleader at Kolhapur to take necessary steps for the recovery of Government dues as proposed by the District Government Pleader, Belgaum. Action taken may please be intimated".

****

No.J.101/45.

Kolhapur Residency,
Deccan,
31st March 1945.

Copy with enclosures in original forwarded with compliments, to the Prime Minister of Kolhapur, for favour of action and return.

Sd/-
Assistant Secretary,
for Secretary to the Resident for
Kolhapur & Deccan States.

.....

Copy of letter No.J.1110 of 1945, dated the 11th/16th May 1945, from Prime Minister of Kolhapur to the Secretary to the Resident for Kolhapur and the Deccan States.

...

Re : Recovery of Government costs in Civil Suit No.364/39 of the Court of the F.C.S.J., Belgaum.

" In returning herewith the correspondence resting with the Residency endorsement No.J.101/45, dated the 31st March 1945, I have the honour to state that there is no reciprocal arrangement between the Bombay Government and the Kolhapur Durbar as regards employment of officers. And, the State Government Pleader not being authorised by the Bombay Government by any general or special order to appear and act on their behalf in any judicial proceeding pending in the State Courts, cannot appear and act for the Bombay Government in the execution proceedings as suggested by the Collector of

Belgaum ...

Belgaum in his letter No.L.A.W.S.R.382, dated 24th March 1945.

...

N.A.T.101/45. Kolhapur Residency,
Deccan,
25th May 1945.

Copy with enclosures in original forwarded with compliments to the Collector of Belgaum for information with reference to his Memorandum No.L.A.W.S.R.382, dated the 24th March 1945.

Sd/-
Assistant Secretary,
for Secretary to the Resident for Kolhapur and the Deccan States

---

L.A.W.S.R.382.
Belgaum, 4-5/6-45.

Forwarded with compliments, to the Executive Engineer, Belgaum Division, for perusing the letter of the Prime Minister, Kolhapur.

2. Papers of the case etc., on file accompany.

Sd/- H.G.Gajendragadkar,
for Collector, Belgaum.

No.G.1/8195. Executive Engineer's Office,
Belgaum, 15th June 1945.

Forwarded with compliments, to the District Government Pleader, Belgaum, with reference to the correspondence ending...

ending with his letter No.C.S.364, dated 18-5-1945, for favour of suggesting a procedure for effecting recovery of the decretal amount.

Sd/- R.L.Deshpande,
Executive Engineer,
Belgaum Division.

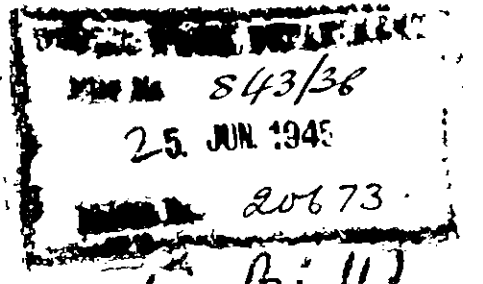
Copy with a copy of the endorsement, forwarded with compliments, to the Superintending Engineer, Southern Circle, Belgaum, for information with reference to correspondence ending with endorsement below this office letter No.C-1/7757, dated the 2nd June 1945.

As regards the insurance of the bus it may be stated that the information is still awaited from the Kolhapur Durbar to whom a reference has again been made in the matter. Further report will be made as soon as the information is received.

****

EB(II)
ON.
The receipt of a further report from the S.E, S.C., may be awaited - vide para 2 - P. 143 of the S.E's endt. No. G.1, dt. the 23-6-45.
Recd 17/7/45
Await
11/7/45

EB(I) 25/6




EB(II)

Copy of letter No.G-1/9488 dated the 20th July 1945 from the Executive Engineer, Belgaum Division, addressed to the Superintending Engineer, S.C., regarding Civil Suit No.364 of 1939 for Rs.560/- against Shri Laxmi Motor Service Co., Kolhapur and two others.

***** 141

" Reference : Your expeditor No.G-1/1, dated the 10th July 1945.

In reply to this office No.G-1/8195, dated the 15th June 1945, the District Government Pleader, Belgaum, has stated that if the services of the Government Pleader, Kolhapur, cannot be availed of as such, he can still be engaged to do the work as a private pleader and the recovery work proceeded with. The case papers have, therefore...

therefore, been forwarded to the Collector of Belgaum for taking necessary action in the matter as suggested by the District Government Pleader and communicating the result which is awaited.

2. With regard to the Insurance of the Bus, I am also awaiting information from the Secretary to the Resident for Kolhapur and the Deccan States, who has already been expedited in the matter on the 3rd July 1945.

3. Further developments in the matter will be reported as soon as they are known to this office."

***

* Below Executive Engineer, Belgaum Division's endorsement No.G-1/9819, dated the 28th July 1945 (regarding Civil Suit No.364 of 1939 for Rs.550/- against Shri Laxmi Motor Service Co., Kolhapur and two others.

*****

No.G-1. Public Works Department,
Belgaum, 1st August 1945.

Copy together with a copy of the Executive Engineer, Belgaum Division's letter No.E-1/9488, dated the 20th July 1945, forwarded with compliments, to the Secretary to Government, P.W.D., Bombay, in continuation of this office endorsement No.G-1, dated the 23rd June 1945. 143. 147-148

2. Further development in the matter will be communicated to Government on receipt of information from the Executive Engineer.

* Typed on the reverse.

SDK. Superintending Engineer, S.C.

P.T.O.

Copy of letter Dy.No.J-1756/45, dated 23rd July 1945 from the Secretary to the Resident for Kolhapur and the Deccan States, to the Executive Engineer, Belgaum Division.

...

Subject :- Civil suit No.364 of 1939 for Rs.550/- against Shri Laxmi Motor Service Co., Kolhapur and two others.

Reference : Your letter No.G.1/8199, dated the 15th June 1945 and subsequent reminder.

Memorandum :

" The Kolhapur Darbar intimate that the Bus No.Kop-396 was not insured against any risk."

No.G-1/9819. Executive Engineer's Office,
Belgaum, 28th July 1945.

Forwarded with compliments, to the Superintending Engineer, Southern Circle, Belgaum with reference to para 2 of his endorsement No.G-1 dated 27th March 1944 and in continuation of para 2 of this office letter No.G-1/9488, dated the 20th July 1945.

2. Reply from the Collector of Belgaum regarding the steps taken for recovering the amount is still awaited and will be communicated on receipt.

Sd/- B.L.Deshpande,
Executive Engineer,
Belgaum Division.

*****

843/36
8 AUG 1945
25564

843/36/2656

E. B. (II). P. W. D.

Submitted.

2. The receipt of a still further report from the S. E., S. C., may be awaited - ~~vide para 2 of his endt. No G-1, dt the 1-8-45~~.

K.R.B. 6.8.45.

6/8/45

Agreed 6/8/45

? A. Wseq

Copy of letter No.L.A.W.S.R.-382 dated the 22nd September 1945 from the Collector of Belgaum to the Executive Engineer, Belgaum Division.

Subject:-Civil suit No.364 of 1939 for Rs.550/- against the Shri Laxmi Motor Service Co., Kolhapur and two others.

Reference: Your reminder No.G.1/111 dated 29th August 1945 on the above subject.

The R.L.A. Bombay has been requested to move Government to write off the decretal amount of Rs.550/- with the interest thereon at 6 per cent per annum and also for costs of Rs. 141-12-0. The result will be intimated on receipt of the reply from the R.L.A.".

*********

No.G.1/11577. Executive Engineer's office, Belgaum, 28th September 1945.

Forwarded, with compliments, to the Superintending Engineer,S.C., Belgaum, in continuation of this office endorsement No.G.1/11153 dated the 13th September 1945.

Sd. R. L. Deshpande
Executive Engineer,B.Dn.

*********

No.G-1

No.G-1.

Public Works Department,
Belgaum, 3rd ~~September~~ October 1945.

*Typed below.

P 155 Copy together with a copy* of the Executive Engineer's endorsement No.G-1/11153 dated the 13th September 1945 forwarded, with compliments, to the Secretary to Government, Public Works Department, Bombay, in continuation of this office endorsement No.G-1 dated the 1st August 1945. P 149

V.M.T.

Superintending Engineer, S.C.

* Copy of letter No.L.A.W.S.R.-382 dated 3rd September 1945 from the Collector of Belgaum, regarding Civil Suit No.364 of 1939 for Rs. 550/- against the Shri Laxmi Motor Service Co., Kolhapur and two others.

"Reference: Your reminder No.G-1/III dated 29th August 1945 on the above subject.

I have requested the D.G.P. to furnish the copy of the judgment in this case for reference in order to move Government to write off the amount in question"

EB DC/10
FILE No 843/36
6 OCT
33125.

Below letter No.L.A.W.S.R.-382 dated 3rd September 1945 from the Collector of Belgaum.

********

No.G-1/11153. Executive Engineer's office,
Belgaum, 13th September 1945.

Forwarded, with compliments, to the Superintending Engineer, Southern Circle, Belgaum, with reference to para 2 of his No.G-1 dated the 1st August 1945.

1149

2. This also disposes of his No.G-1/1 dated 8th September

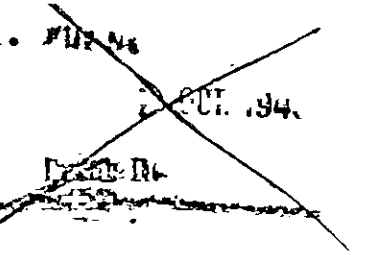
843/36/33125.

1945.

Sd. R. L. Deshpande

Await-
13/10/45

Executive Engineer, B.Dn.




E.B. (II).

Submitted.

2. A further report may be awaited.

R.B.
10.45.

13/10/45

**********

Pl. see paper marked "A" on page 153

S. A. S.

**Writing off**

Of the irrecoverable amount of dues in Civil Suit No.364 of 1939 in the Court of the First Class Subordinate Judge, Belgaum.

GOVERNMENT OF BOMBAY
Legal Department.
Resolution No. 8950
Bombay Castle, 30th November 1945.

Letter from the Collector of Belgaum No.L.A.W.S.R. 382, dated 17th September 1945. Stating that the Civil Suit noted in the margin was decided in favour of Government and a decree was passed for Rs.550/- with interest thereon at 6 percent per annum and also for costs Rs.141-12-0 from the defendants Nos. 2 and 3 and since both the defendants reside in the Kolhapur State, the state Authorities were requested to recover the amount from the defendants but they state that the defendants have sold the property they had in their possession and hence the amount cannot be recovered and requesting that the amount may be written off .

| |
|---|
| In the Court of the First Class Subordinate Judge, Belgaum.<br><br>Civil Suit No.364 of 1939.<br><br>The Bombay Province -- Plaintiff;<br><br>Vs.<br><br>1. Shri Laxmi Motor Service Company<br>2. H.B.Shinde<br>3. V.D.Patil } Defendants.<br><br>Claim Rs.550/- |

Endorsement by the Commissioner Southern Division, No.L.A.W.705, dated 15th October 1945 forwarding the above with his concurrence.

RESOLUTION:- In the circumstances stated by the Collector of Belgaum the irrecoverable amounts of Rs.550/- and Rs.141-12-0 ~~is~~ are written off.

By order of the Government of Bombay,

P.N.Mehta

For { P.N.MOOS,
Secretary to Government

To
The Public Works Department,
The Revenue Department,
The Finance Department,
The Accountant General, Bombay,
The Commissioner, *Southern Division*,
*The Collector* of Belgaum,
The District Government Pleader, Belgaum.

Kc.

843/36/39820.

E. B. (II) P.W.D

[Below copy of C. R., L. D., No 8950, P157 d/ the 30-11-45]

No 843/36 - E (II) P. W. D.
B. C., 5th Dec. 45.

Copies forwarded to P.131.
the S. E., S. C. (with ref. to his letter No G-1, d/ the 8-12-45),
the Ex. Engr., Belgaum Dn.,
for information.

By order etc.

K.R.B.
3.12.45.

4/12/45

S A S

4/12/45

4/12

RECORDED

FILE No. 843/36
10 NOV.
39820
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